INLAND MARINE

AND

TRANSPORTATION INSURANCE

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Foreword

FOR THE PAST QUARTER-CENTURY inland marine insurance has been, and promises to continue to be, one of the most dynamic fields of insurance. Its growth has been phenomenal; changes of fundamental importance have been made in policy provisions and in rates; governmental and self-regulation have assumed roles of increasing significance; serious problems have arisen for which solutions have been sought; and the impact that developments in this field have had upon other fields of insurance has been of great consequence.

In this setting, the need for a modern, comprehensive treatise on inland marine insurance is evident. It becomes even more evident when one finds that there has been but little definitive literature produced on the subject. Publications that appeared during the early years of the business rapidly became obsolete. More recent works have dealt with specialized aspects of the subject. Although changes are still to be expected, the business has reached such a stage of maturity and relative stability that today's practices no doubt establish the basic pattern that will be followed for a considerable time in the future. A presentation of the principles and practices under which the business now functions constitutes a timely contribution and is likely to be of relatively permanent value.

Mr. Rodda has created his manuscript from a background of almost twenty-five years in the insurance business. For one year he was Engineer with the Schedule Rating Office of New Jersey and for four years, Chief Engineer of the Underwriters' Association of the District of Columbia. He served six years as Manager of the South Atlantic Adjustment Company and four years as Manager of the National Mutual Association. Since 1940, as Secretary-Treasurer of the Transportation Insurance Rating Bureau, he has been in a unique position to observe developments in inland marine insurance and has brought this wealth of experience to this volume.

C. M. KAHLER,
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CHICAGO, ILLINOIS

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CHAPTER I

Heritage from Ocean Marine Insurance

THE BUSINESS of insurance may be divided into three major groups: life insurance, casualty insurance, and property insurance. There is some overlapping between the coverages provided by the insurance companies in these groups. Many life insurance companies issue accident insurance policies. Casualty insurance companies also issue accident insurance policies, although their principal business is the insuring of the liability to which a policyholder may become subject as a result of his acts. Insurance against loss or damage to property is the third group. Property insurance in the United States is issued principally by fire and marine insurance companies, although casualty insurance companies insure against loss of property from certain causes such as burglary and theft. Inland marine insurance is one form of insurance against loss or damage to property. It generally is written by fire and marine insurance companies, although casualty companies may write some forms of inland marine coverage.

The words "inland marine" are confusing to the student of insurance unless he realizes that the term grows out of the development of a form of insurance, rather than being descriptive of the protection this form of insurance affords.

For many hundreds of years the bulk of commerce was carried on oceans and rivers. Dependence upon water transportation was so great that in the early days of the United States the people built numerous canals in order to provide waterways where nature had not supplied rivers. Cities were dependent upon commerce for their growth, and there were few cities of any size that were not located on waterways or harbor sites. Ships could carry large quantities of goods at low cost over long distances, whereas land transportation was slow and costly. Thus "transportation" and "marine" were almost synonymous, and the protection of goods in transit became "marine" insurance.

Protection of ocean commerce from financial loss resulting from

perils of the sea goes back many hundreds of years. Forerunners of insurance as we know it were the bottomry bond and the respondentia bond. The bottomry bond was a form of note given by the owner of a vessel to a moneylender who financed the voyage, using the ship as collateral. If the vessel completed its mission safely, the owner paid back the loan, including an interest charge. If the vessel was lost, the owner was discharged from his debt and he paid nothing. The interest charge, to the extent that it exceeded the amount charged on an ordinary loan requiring repayment without qualification, constituted a form of insurance premium for possible loss of a ship. A respondentia bond was a similar kind of arrangement whereby the money was lent on a cargo of merchandise.

During the thousand years of intellectual stagnation known as the Dark Ages in Europe, many ruling church dignitaries frowned upon any arrangement in the nature of insurance. The charging of interest upon a loan was considered usury, and consequently contrary to divine laws. Bottomry bonds and respondentia bonds likewise were discouraged. Furthermore, any arrangement which alleviated, or indemnified for, a disaster was considered to be a violation of the ordinances of God. Any disaster happening to a person was supposed to be a visitation "decreed" by the Almighty, and it was sacrilegious for people to prepare against such calamities.

The expanding needs of commerce and the broadened viewpoint of European peoples following the discovery of America brought about a change in the attitude toward interest charges. Gradually the term "usury" came to denote an unreasonable percentage of interest, and an accepted practice grew up of charging a fair amount for the use of financial capital.

Early Insurors

Modern insurance protection for vessels and cargoes at sea is an outgrowth of the meetings of moneylenders and shipowners who gathered in Lloyd's coffeehouse in London during the late 1600's. There they discussed the latest news of ships and commerce, and made arrangements for loans on ships and cargoes. Gradually there grew up a system whereby men, or groups of men, would "underwrite" ocean voyages. That is, they agreed coöperatively

to reimburse the owner of a ship or cargo if it were lost at sea. On this promise, the owner was able to borrow money to carry on his ventures.

During the intervening 250 years there has developed a great system of insurance protection for all phases of commerce. The Lloyd's organization of individual underwriters is an important part of the marine insurance picture. There are also hundreds of corporations that we know as insurance companies, which insure property in transit. The heritage and traditions of ocean marine insurance have been carried into this new field of inland marine coverage for protection of transportation on land or in the air.

It always is easier to understand a child if something is known of the family background. Because inland marine insurance is an immediate child of ocean marine, many of the family characteristics have been inherited. Prior to 1921, all insurance on property in transit was called marine insurance and there was no segregation of ocean marine as distinct from inland coverages. When they first were separated in the reports for 1921, ocean marine premiums written in the United States amounted to slightly more than $48,000,000, whereas inland marine premiums were only about $16,000,000. By the late 1940's the child had outgrown the parent. Inland premiums totalled about $250,000,000, but ocean marine premiums were only about three-fourths of that amount.

Marine Insurance Moves Inland

Originally marine insurance protected property from perils of the sea while it was on shipboard. The shipper delivered the goods to the ship, and the consignee would pick up his property when it arrived at the destination. The arrival of a ship from overseas was an event in which the entire port was interested, and the consignees would gather in enthusiastic groups to claim their property. As commerce expanded and became complicated, more and more goods were unloaded and held on the pier for the consignee or someone representing him.

There was always danger of loss while the property was on the pier awaiting the consignee, and the owner of the property needed insurance protection during this period. The first extension of the ocean marine policy to cover goods on land was the including of a

provision in the policy that coverage was extended to goods on the piers and wharves alongside the ship.

The building of the railroads permitted factories and warehouses to be located at a distance from harbors, and railroads aided the growth of cities away from the waterways of commerce. The destination of a water-borne cargo often was many miles from the dockside where the goods were first unloaded. Consignees soon realized that they did not want to be troubled with securing separate insurance policies on every shipment. In addition, they frequently were not aware of the exact time of arrival of a ship and might not be able to arrange immediately for proper coverage. Consequently, marine insurers of cargo were asked to extend their coverage beyond the dock and to cover property until it arrived at the warehouse or factory of the consignee. Ocean marine policies were then endorsed to include what became known as the "warehouse to warehouse" clause. The use of this "warehouse to warehouse" clause was an early example of what we know today as inland marine insurance. It was included as part of the coverage under ocean marine policies, but it was a new and distinct type of insurance in that it covered transportation on land as well as on water.

The "warehouse to warehouse" clause as originally drawn provided for coverage from the warehouse at the port of shipment until the goods were deposited in the warehouse or factory at the port of discharge of the overseas vessel. However, as factories and warehouses began to be constructed in the country away from ports, it became customary to extend the "warehouse to warehouse" clause so that it covered from the original point of shipment to the destination, even though both of them might be many miles away from the port.

The typical "warehouse to warehouse" clause extends the policy to cover the goods from the time they leave the shipper's or manufacturer's warehouse at the point of shipment, and continues coverage during the ordinary course of transit either until the goods are deposited safely in the consignee's or other warehouse at the destination named in the policy, or until the expiration of fifteen days from midnight of the day on which discharge of the goods from the overseas vessel is completed, whichever occurs first. If the destination to which the goods are shipped is outside the limits of the port of discharge of the overseas vessel, the coverage continues

either until the goods are delivered safely to the consignee or deposited in a warehouse at the destination named in the policy, or until the expiration of thirty days from midnight of the date on which the discharge of the goods from the overseas vessel is completed, whichever occurs first. The clause ordinarily provides for only thirty days' coverage after discharge from the overseas vessel, although this can be extended if it is anticipated that the shipment will be in transit more than thirty days after discharge at the port.

Complications began to arise in connection with shipments by land. Sometimes it is not possible to send a shipment directly from the port to the destination, or it might be necessary to arrange for another means of transfer than that originally intended. Insurance does not cover during delay or transshipment unless specifically provided for in the policy. Therefore, the "warehouse to warehouse" clause frequently includes a provision that transshipment or delay arising from circumstances beyond the control of the assured is covered, but that an additional premium must be paid therefor.

Similarities between Ocean and Inland Marine

Coverage to apply during transportation of goods. Two of the fundamental principles of marine or transportation insurance may be seen in the manner in which the "warehouse to warehouse" clause is applied to land transportation.

The first is that the coverage applies only while the property is out of the control and custody of the assured.

The second principle is that the coverage is effective only while the property is in the ordinary course of transit, and ceases when it is deposited at a place of storage.

The fifteen days' limitation at the port of discharge and the thirty days' limitation while in transit beyond the port of discharge are intended to put a limit on the time the property may be considered in transit.

It became necessary to define and limit the insuring powers of marine underwriters. The "Nation-Wide Definition and Interpretation of the Insuring Powers of Marine and Transportation Underwriters" was adopted in 1933 by the National Association of Insurance Commissioners. It included a limitation on the coverage of domestic shipments to a period not exceeding thirty days after

arrival at the consignee's premises or other place of storage. This was carried over from the earlier limitations in the "warehouse to warehouse" clause of the ocean marine policy.

Further extensions of the "warehouse to warehouse" principle of insurance coverage were desirable. It became customary to add a deviation clause to provide for automatic coverage when there is some extraordinary delay in the transportation of the property. The deviation clause provides for the payment of an additional premium when the delay extends beyond a specified time or when it results from perils not covered by the policy. These extensions of coverage have gone to great lengths and have been broadened to include, for example, wool from the time of shearing, or cotton from the time of ginning; during a period of storage in a warehouse; and until shipped and delivered at a final destination many thousands of miles away.

Broad coverage of marine policies. The coverage under these ocean marine policies ordinarily is much broader than can be secured under other policies or combinations of policies applicable to fixed locations. Ocean marine underwriters were the first to offer such broad coverage, and this was extended to their coverage of property in transit by land.

The coverage under ocean marine policies always has been broad and has been worded in such terms as "insured against loss by perils of the sea." It would be difficult to list all of the many perils to which a ship at sea is subject. When ocean marine insurance moved inland, ocean marine underwriters followed the same reasoning and insured against loss from the "perils of transportation." Other phrases used by ocean marine underwriters in granting coverage against perils on land include "hazards and dangers of transportation" and "loss or damage from any external cause." The clause which has had the greatest effect upon the wording of inland marine policies is "all risks of transportation and navigation." This is a direct ancestor of the inland marine coverage against "all risks of loss or damage."

Insurance of fixed property on land tended to be phrased in terms of specified perils instead of in broad, general terms. Thus on fixed property policies, the coverage was against loss by fire, lightning, windstorm, tornado, burglary, and the several other perils now listed in the extended coverage endorsement to the fire policy and in burglary policies. The "all risks" type of coverage is

advantageous to the policyholder because it does not leave any gaps between the specified coverages, and it gives a more nearly complete protection. For example, the extended coverage endorsement to the fire policy, or a windstorm policy, covers damage resulting directly from the force of the wind, but it does not cover damage resulting from water blown into a building if there is no opening made by the wind. A policy which covered "all risks of loss or damage" would protect against such a loss if there were no specific exclusion of such damage.

The tendency now is toward broader coverage and an elimination of the gaps between coverages. The marine and inland marine policies have led the way toward a complete coverage for the assured with their "all risks" type of coverage.

Open and blanket policies were used first in connection with ocean marine coverages. Many times it is difficult for the owner of a cargo to know when his property is being shipped, how long it will be at risk on shipboard, and what its value will be by the time it arrives at destination. A great deal of work would be required on the part of the insurance company or the marine insurance broker if a separate policy had to be written for each voyage. In order to provide automatic coverage on all shipments merely by having them reported, marine underwriters write policies covering on a reporting or open basis. Policies also are written on a blanket basis covering all property that the assured might have at risk within a certain time and under specified conditions. Blanket policies may provide for an adjustment of premium at expiration, depending upon the amount of property at risk under the policy.

Insurable interest. The assured must have an insurable interest in the property covered. He cannot gamble on the occurrence of an event which would not cost him anything financially.

Only fortuitous losses insurable. Fortuitous losses are the only losses that may be insured under ocean and inland marine policies. Expected losses, such as those occurring as a result of wear and tear, or losses resulting from the negligence of the assured are not covered. There must be some risk or unexpected occurrence which results in the loss or damage. For the same reason, losses resulting from inherent vice or some quality within the cargo which tends to destroy it are not covered, because they do not result from a fortuitous occurrence or a risk.

Obligation of assured to protect property. The assured under

an ocean marine policy has an obligation to protect his property in case of threatened loss, or from further damage in case of partial loss. The ship or cargo covered by an ocean marine policy may be thousands of miles away from the insurance company, and in case of loss there may be no opportunity for the assured to get in touch with the insurance company to ask whether a certain salvage action should be taken. The insurance policy, therefore, places on the assured a definite obligation to use all means of preserving property and securing whatever salvage can be obtained. This principle has been carried over into inland marine insurance practices and phraseology.

Valuation of insured property. Some ocean marine policies are on a valued policy basis. A valued policy is one that states the value of the insured property and agrees to pay the stated amount in case of total loss. When the policy does not agree to a value, it is customary to include a clause which establishes a method of valuation to be used in case the property is lost or damaged. The necessity for this can be seen when it is considered that after the sinking of a ship there would be no remains that could be examined to determine the value of the property. The use of a valued policy is feasible because the insured property ordinarily is beyond the custody of the assured. The fact that the assured is not in a position to cause a loss eliminates the moral hazard that might be present if the property were in his custody.

In the case of open policies when the property cannot be valued in advance of shipment, it is necessary to have some method of establishing the value. A frequently used clause provides that the property shall be "valued at actual cash value on date and at place of shipment." Sometimes the clause sets a valuation based on the invoice cost. These are similar to the valuation clauses used on motor truck cargo policies and other forms of inland transportation coverage.

Archaic language in marine policies. Part of the heritage modern transportation insurance has received from ocean marine is undesirable or troublesome. An example is the archaic language of ocean marine contracts and clauses. The basic policy in an ocean marine insurance contract has not been changed materially for 200 years. The words and phrases are those of the years before the American Revolution and in many cases are quite incomprehensible to a person who reads them in terms of modern English.

There is little logic or order in the way the ocean marine contract is put together. Clauses are inserted at random, just as they were added from time to time to take care of new developments in ocean transportation.

Insurers of ocean marine perils have been reluctant to revise or discard any of this ancient language because most of the wording has been weighed and decided upon by courts. Although the language cannot readily be understood by the policyholder, it is true that admiralty courts have decided definitely upon the meaning of many of these ancient clauses and phrases. Ocean marine insurers feel that any changes in the contract would lend uncertainty to the coverage and might weaken the provisions of the contract.

When marine insurance policies first were extended to cover land transportation, the ancient ocean marine insurance clauses were used to provide the coverage. Early forms of transportation insurance policies were couched almost entirely in ocean marine terms, and even today many of the quaintly worded clauses are to be found in inland marine policies and forms.[1] Inland marine underwriters have been inclined to depend upon the interpretations made by admiralty courts and have avoided redrafting because they felt that the meaning of the marine clauses was definitely established.

The use of outmoded English expressions frequently complicates relations with policyholders. For many years insurance companies have attempted to encourage their policyholders to read their insurance policies and to try to understand the coverage provided. This advice tends to fall flat when the policy is written in terms which cannot be understood by a person not conversant with decisions in admiralty courts.

During the past few years there has been increasing evidence that inland marine underwriters may have been guilty of wishful thinking in their dependence upon quaint language and decisions of admiralty courts going back some 300 years. There is a tendency for many of today's courts to interpret insurance policies in terms of what the language would mean to an ordinarily intelligent and prudent man. In several important cases the wording has been interpreted according to modern usage.

[1] An example of archaic language found in inland marine policies is in the "sue and labor" clause. For a discussion of this clause, see Chapter IV.

One of the best examples of this is in connection with ocean marine coverage and involves use of the word "thief." A "thief" according to the language of a few hundred years ago (and according to the intent of the ocean marine insurance policy) is what we think of today as a highwayman, a holdup man, or a pirate. "Loss resulting from thieves" is robbery committed by force and violence or threat of violence.

The term "theft" as used today is generally understood to include the taking of property by stealth as well as robbery committed by violence or threat of violence. It includes what ocean marine underwriters consider to be pilferage. It has been the intent of ocean marine insurers to protect against piracy and holdup as we understand them today, but it has not been their intention to protect against loss by pilferage. It was the theory of marine underwriters that pilferage results from dishonesty or carelessness on the part of people in control of property. They feel that these traits would be encouraged if pilferage were covered. In addition, pilferage losses are so numerous that insurance premiums would become prohibitive if they were covered. Ocean marine underwriters have deplored the fact that state courts in the United States have ignored the ancient doctrine that the word "thieves" meant perpetrators of larceny by force or violence. As a result of such decisions, it has become common practice in the United States for ocean marine policies to have the words "assailing thieves" inserted in the coverage clauses in order to limit the coverage to that originally intended. It is worthy of note that the Marine Insurance Act covering ocean marine insurance as written in England states: "The term 'thieves' does not cover clandestine theft or a theft committed by anyone of the ship's company, whether crew or passengers."

It is true that many ocean marine policies now cover pilferage at a cost commensurate with the hazard. The coverage has been provided in an effort to meet the needs of merchants. But many ocean marine underwriters have regretted the necessity of granting pilferage coverage, because they hold that it encourages carelessness on the part of the ship operators in connection with property for which they are responsible.

The attitude of the courts concerning archaic language in insurance policies is indicated in a 1947 case [2] in which Judge Learned

[2] Gaunt v. John Hancock Mutual Life Ins. Co., 160 F. (2d) 599 (1947); cert. den., 331 U. S. 849, 91 L. ed. 1858 (1947).

Hand of the United States Court of Appeals gave a severe drubbing to the theory that ancient language should be interpreted in its original meaning. The case involved life insurance, but the attitude of the court is indicative of what inland marine underwriters may face. Judge Hand stated:

> An underwriter might so understand the phrase, when read in its context, but the application was not to be submitted to underwriters; it was to go to persons utterly unacquainted with the niceties of life insurance, who would read it colloquially. It is the understanding of such persons that counts; . . . to demand that persons wholly unfamiliar with insurance shall spell all this out in the very teeth of the language used, is unpardonable. . . . insurers who seek to impose upon words of common speech an esoteric significance intelligible only to their craft, must bear the burden of any resulting confusion.

The ancient marine language is satisfactory as long as it is used and understood by the insurer and by marine policyholders who are dealing in those terms in the regular course of their business. It does not appear that this much can be expected of the millions of inland marine policyholders who have had no contact with the sea and have never heard of admiralty court decisions. It probably can be anticipated that a court might construe the archaic language of the marine policy against an insurance company, on the ground that such language is at least partly unintelligible to anyone not acquainted with ocean marine insurance, and a company that uses such language must take the consequences of the most adverse construction.

In another case[3] the United States Circuit Court of Appeals, Seventh Circuit, stated:

> The language of the policy is to be construed in accordance with the principle that the test is not what the insurer intended its words to mean, but what a reasonable person in the position of the insured would have understood them to mean.

Differences between Ocean and Inland Marine

In contrast to the many similarities between ocean marine insurance and inland marine insurance, there are many differences. Some of these have arisen because inland transportation coverage is new. Underwriters as well as the courts have a tendency to consider new situations in terms of modern language. Other differences have arisen because hazard and mode of transportation are not the same in both cases.

[3] Hoffman v. Illinois National Casualty Co., 159 F. (2d) 564 (1947).

General average. An important principle in ocean marine insurance that is seldom used in inland coverages is that of general average. When vessels at sea are threatened with a peril, it sometimes happens that the peril can be avoided, or the loss reduced, by throwing overboard a portion of the cargo or discarding some portion of the ship. This act of throwing away cargo or a portion of the ship is known as jettison. It is a principle of maritime law that when a voluntary sacrifice, such as jettison, becomes necessary in order to save the rest of the venture, the loss should not be stood only by the owners of the property sacrificed but should be distributed over the entire value of the ship, the cargo, and the freight charges. This process of distributing the loss of sacrificed property over the entire value is known as general average. Ocean marine insurance policies usually are written to cover general average charges. In such cases, the insurance company pays any such charges assessed against the property covered by the policy, even though that property is undamaged.

The general average principle seldom is used in land transportation because it is only in rare instances that a land cargo or portions of a carrying vehicle would be sacrificed in order to save the entire load. As a result, general average charges frequently are not mentioned in an inland marine insurance policy. Underwriters anticipate that there may be occasion for jettison and general average in connection with air transportation, for in some cases an airplane in trouble has jettisoned cargo in order to make a safe port with the remainder of the cargo and the plane itself.

Certain elements are necessary for a general average claim to be accepted:

1. The existence or imminence of some risk must appear to threaten all interests, that is, both the ship and the cargo.
2. There must be a voluntary sacrifice, or some extraordinary expense, with the purpose of avoiding loss or reducing it for the common interest of all owners.
3. There must be some practical effect of the effort, and at least a part of the value must be saved.
4. There must be a freedom from any fault on the part of the interests that are claiming contribution from the rest of the venture. For example, if the owners of the ship are claiming general average contribution, the owners must show that they were not at fault in connection with the risk that threatened the ship and cargo.

It is interesting to see how some of the practices in connection with general average were responsible for early forms of what we now know as "personal effects policies." Over a period of several hundred years there was discussion as to whether the personal property and effects of passengers on board a ship should contribute to the general average, as does the cargo on board. Agreement finally was reached to the effect that passengers' property and personal effects on board a ship would not contribute to general average. Along with this exemption of passengers' effects, there developed the corollary principle that the insurance on cargo did not cover the personal effects of passengers and crew. It then became necessary for passengers and crew to purchase their own insurance on their personal effects if they wished coverage. The insurance on the captain's or master's personal effects was known colloquially as a "slop chest" policy. Thus the early forms of our modern personal effects policies were the "slop chest" policies of the mariners of 200 years ago.

Particular average. "Particular average" in ocean marine parlance refers to a fortuitous partial loss to the property of a particular interest. That is, it is a loss applying only to a particular portion of the cargo, or to the ship itself, without there having been any jettison or voluntary damage to other parts of the cargo in order to save the venture. For example, if a portion of the cargo were stolen under circumstances that made the theft covered by the insurance policy, this would be a particular average. The term is not used generally in inland marine policies, but may be found occasionally. A particular average under an inland marine policy is the same as a partial loss.

Franchise and deductible clauses. The principle of applying a deductible to insured losses has been borrowed from ocean marine insurance. Ocean marine policies seldom use the word "deductible," but frequently they include a "franchise" clause. A clause may state that the insurance is "free of particular average," or perhaps that it is "free of particular average amounting to less than 3% [or 5%] of the value." In the former case the policy would not pay a partial loss applying specifically to the insured cargo; in the latter it would pay nothing on a loss amounting to less than the amount specified, but would pay in full any loss equal to or exceeding that amount.

Deductible clauses are used on many inland marine policies.

Usually they provide that a specified sum shall be deducted from the amount of loss or damage, and the insurance company will be liable only for any loss in excess of the deductible amount. Occasionally an inland marine policy specifies the deductible as a percentage of the policy amount.

A deductible clause makes the assured bear at least a part of any loss he sustains. A franchise clause makes him bear any loss that is less than the amount specified. The objective of such clauses is to make the assured more careful.

Many inland marine underwriters feel that a franchise clause has a tendency to encourage the inflation of claims so that the amount will be large enough to be paid under the policy. This may be specially troublesome with losses involving household goods in use, for which there is no definite market value. A $20 loss that occurs under a policy with a $25 franchise clause may be inflated to $26 so that the entire amount will be paid. It is more difficult to inflate a loss under a deductible policy because the specified amount would be deducted from the amount payable. In the example cited, the loss would have to be inflated to $45 in order to collect a $20 loss under a $25 deductible policy.

Coinsurance. Inland marine underwriters borrowed the idea of coinsurance from ocean marine insurance, but coinsurance is not required universally on inland marine policies as it is on ocean marine policies. Under an ocean marine policy, the insurance company pays the full loss if the amount of insurance is equal to the insurable value or, in the case of a valued policy, the stated value. If the amount of insurance is less than the insurable value or the stated value, the insurance company pays only that proportion of the loss that the amount of insurance bears to the insurable value or the stated value. Thus, underinsurance results in the assured's collecting less than the amount of the loss under an ocean marine policy. In the case of a valued policy, overinsurance can result in the assured's collecting more than his actual loss, even if it is only a partial loss. The insurance company would pay that proportion of the loss that the amount of insurance bears to the stated value. For example, suppose a cargo were correctly valued at $100,000 but was insured for $125,000. If a loss occurred amounting to 10% of the value, the assured would collect $12,500.

Inland marine underwriters have adopted the idea that the insurance company's loss payment should be in the same proportion

to the loss as the amount of insurance bears to the value of the property. Most rates are calculated on the assumption that insurance will be approximately equal to the value of the property insured. Underinsurance would result in the company's securing an inadequate amount of premium for the liability assumed. Full insurance to value is required on many inland marine policies, and the clause reads to the effect that "the company shall not be liable for a greater proportion of any loss than this insurance bears to the actual value of the property insured." Inland marine policies covering personal property frequently are written without co-insurance.

Warranties. One of the most important differences between ocean and inland marine insurance is in connection with warranties. Warranties are extremely important to the insurer of an ocean-going craft, and complete good faith is necessary on the part of the ocean marine policyholder. His ship may be in a remote part of the world and far from communication with the insurer. The insurer has no opportunity to check the conditions under which the ship sails or under which the cargo is loaded. It has become customary for ocean marine policies to contain warranties concerning certain conditions; if the warranties are broken or are not fulfilled, the insurance policy ceases to cover.

Warranties in ocean marine insurance are made in regard to existing conditions and also to future acts on the part of the assured. Warranties must be complied with exactly, regardless of whether they have any effect on the hazard causing a loss. The mere fact that a warranty has not been fulfilled is sufficient to avoid the coverage, even though the loss would have occurred if the warranty had been fulfilled. However, if a loss occurred prior to the breach of warranty, the insurer is liable for it.

There are implied warranties in ocean marine insurance that are just as binding as written ones. For example, there is an implied warranty as to the seaworthiness of the vessel, even if such a warranty is not written into the contract. Under maritime law and the decisions of admiralty courts, these implied and written warranties are given complete effect, and the breach of either will avoid the coverage.

In connection with inland marine insurance, warranties are not so numerous as those in connection with ocean marine coverages, and frequently they are given less effect. In the first place, there

is not the same necessity for a warranty in connection with inland transportation. The inland marine underwriter has an opportunity to check the chances of loss to most property insured by his company. Even when an actual physical examination cannot be made, he does have available general information regarding the terrain over which the property is to be transported and the record of highjackings and other hazards in the communities through which the shipment must pass.

In contrast to the attitude of admiralty courts, which have given full effect to warranties, state courts and many legislatures have looked with disfavor upon warranties on insurance policies covering property within the United States. Life and accident insurance policies have received particular attention from legislatures and courts, presumably because of abuses by a few companies in past years. For example, a warranty in a life insurance contract might be to the effect that the assured had not been to a doctor within the past three years. After the policyholder had been killed in an automobile accident, the company might uncover the information that the policyholder had been to a doctor for treatment of a cold within the three-year period. Liability might be denied, even though the misinformation had nothing whatever to do with the loss. Under a fire policy, for another example, the assured might have warranted that certain protective equipment would be maintained. Liability might be denied for breach of warranty, even though the lack of the protective equipment had no effect on the loss.

Many courts have taken the position that a breach of warranty must have increased the risk of loss if it is to avoid payment. In many states this feeling has been translated into law by the state legislatures. Although much of this legislation seemed to have been aimed at the life insurance field, many of the laws were made applicable to all classes of insurance. For example, the North Carolina Insurance Laws state in section 58-30:

> Statements in Application Not Warranties:—All statements or descriptions in any application for a policy of insurance, or in the policy itself, shall be deemed representations and not warranties, and a representation, unless material or fraudulent, will not prevent a recovery on the policy.

The Insurance Laws of New York State in section 150, paragraph 2, say:

> No breach of warranty shall avoid an insurance contract or defeat recovery

thereunder unless such breach materially increased the risk of loss, damage, or injury within the coverage of the contract.

The importance to inland marine underwriters of these provisions in typical state laws is emphasized by another provision in the Insurance Laws of New York State. Paragraph 3 of section 150 reads:

> Nothing contained in this section shall affect the express or implied warranties under a contract of marine insurance in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on, over or under any seas or inland waters, nor shall it affect any provision in an insurance contract requiring notice, proof or other conduct of the insured after the occurrence of loss, damage or injury.

This provision regarding policies covering risks "on, over or under any seas or inland waters" clearly places inland marine policies covering land transportation in the class where warranties are only representations, and misrepresentations will avoid coverage only when they are material or fraudulent.

The inland marine underwriter has been faced with the necessity for establishing a new terminology to replace the warranties. Most of the warranties applying to inland transportation can be replaced by exclusions or conditions. Instead of using the ocean marine wording of "warranted free from loss or damage caused by," the underwriter can say, "It is understood and agreed that this policy does not insure against loss caused by." The changed wording is better because it can be understood by the policyholder and does not have to be interpreted by admiralty courts.

Abandonment not practiced in inland marine. Another important difference between ocean marine and inland marine insurance is in connection with the right to offer abandonment. Occasionally the owner of a ship or marine cargo may find that it is so much damaged that the expenses of recovery or repair will exceed the value when repaired. Under these circumstances he has the privilege of offering "abandonment." The insurer may accept or reject the offer. When the offer of abandonment is accepted, the insurer pays a total loss under the policy and takes the salvage. This is of advantage to both the company and the policyholder when the company has a better opportunity to make salvage efforts than the assured.

Abandonment is not practiced in connection with inland marine losses, although many policies contain no such prohibition as that

appearing in the fire policy. The existence in the "sue and labor" clause of the words, "nor shall the acts of the assured or of this company in recovering, saving or preserving the property insured in case of loss or damage, be considered a waiver or acceptance of abandonment," might carry the implication that the assured has the right to offer abandonment. The company has the right to reject any such offer, but it would be important that the rejection be made quickly and clearly in order to avoid the possibility of acceptance by default.

The jewelers' block policy contains this condition, which makes it clear that there can be no abandonment to the insurance company: "There shall be no abandonment to the Company of any property." A similar statement may be included in other inland marine policies when the company wishes to make it entirely clear that the ocean marine right to offer abandonment does not exist under an inland marine policy.

Questions

1. In what respect was a bottomry bond similar to insurance?
2. Where did modern marine insurance originate?
3. What was the first extension of ocean marine insurance to cover goods on land?
4. What limitation on coverage of goods at a fixed location was carried over from the "warehouse to warehouse" clause to the "Nation-Wide Definition"?
5. Why did underwriters tend to use broad, general terms in marine and transportation insurance policies?
6. Name some of the more important similarities between ocean marine and inland marine insurance.
7. What are the principal disadvantages of using archaic language in insurance policies?
8. Name the more important differences between ocean marine and inland marine insurance.
9. Why are warranties less important to the underwriter of inland marine insurance than to the ocean marine underwriter?

CHAPTER II

Heritage from Fire and Casualty Insurance

It has been pointed out in Chapter I that inland marine insurance is principally an outgrowth of ocean marine insurance. However, there are many ways in which inland marine practices depart from those of the ocean marine field and follow more closely the practices of fire and casualty underwriters.

Expansion of Inland Marine Underwriting

The coverage that came to be given at fixed locations under ocean marine policies always was incidental to transportation. In contrast, many inland marine coverages are intended primarily to insure property at fixed locations. Examples are the jewelers' block policy, the furriers' customers policy, the personal property floater, bridge and tunnel coverage, and the bailees' customers policies written for launderers, dry cleaners, and cold storage locker operators. As more and more inland marine policies were written to cover at fixed locations, there was a need for inland marine underwriters to employ many of the principles that fire and casualty companies had evolved through many years of insuring property at fixed locations. Thus inland marine insurance has come to be a mixture of ocean marine, fire, and casualty insurance.

Insurance on property at fixed locations differs in many respects from insurance on property in transit. Until recent years, the hazards to stationary property were regarded as largely confined to fire, lightning, windstorm, and theft. Losses from other causes were infrequent and the public did not feel the need for a broad protection. Insurance companies were not entirely familiar with the miscellaneous hazards that might affect fixed property, and they tended to restrict policies on property at fixed locations to cover the hazards that had been insured traditionally. Fire and casualty insurance companies had no experience with "all risks" coverage, and their underwriters were slow to broaden the coverage

of their policies. Marine underwriters were familiar with "all risks" coverage on property that was in transit, but at first they hesitated to extend "all risks" coverage to property that was at fixed locations.

In the 1920's, when inland marine insurance first was distinguished from ocean marine insurance, there were two separate purposes in the minds of the underwriters who were writing these policies.

The first purpose was to extend transit insurance to land transportation. This was first evident in the "warehouse to warehouse" clauses of the ocean marine policies, and later developed into the transportation coverage on property being shipped from place to place on land. There was need for broad coverage of an "all risks" type to protect the property from loss by the many hazards to which property in transit is subject.

The second objective was to answer the public demand for broader protection on property at fixed locations on land. Jewelers wanted a policy that would give them fire and theft insurance in the same policy; owners of bridges wanted a policy that would protect them from loss due to collapse and ice jams, as well as fire losses; operators of chain stores wanted a policy that would cover their goods at any location, without the necessity of reporting changes in value from day to day. Many states, including the important insurance state of New York, had laws that prevented a fire insurance company from writing casualty coverages and a casualty company from writing fire insurance. Neither the fire insurance nor the casualty insurance companies had clear authority to write the miscellaneous coverages demanded by some policyholders.

In contrast, the underwriting powers of marine insurance companies were extremely broad and were not limited by the specific language applying to fire and casualty companies. This resulted largely from the fact that marine underwriters were subject to vigorous competition from Lloyd's of London and from alien insurance companies on their ocean marine business. The states had left marine insurance operations relatively free of regulation so that American companies could compete on an equal basis. This left the marine companies free to expand their domestic activities, even though there was less foreign competition in this field.

Dependence on Casualty Insurance Decisions

The theft coverage provided by inland marine policies follows the practice of the casualty companies rather than that of the ocean marine underwriters. It was pointed out in Chapter I that the word "thieves" in ocean marine policies was intended to refer to theft by force and not by stealth. However, in the United States the word "theft" has come to mean the wrongful taking of property belonging to another, and this is the way the coverage is interpreted in connection with inland marine coverages.[1]

"Burglary" is another term in connection with which inland marine underwriters have come to follow the lead of casualty insurance companies. By definition "burglary" is a term applying only to land coverages and not to ocean marine. Burglary is defined by statute in some states, but the definitions are not uniform, nor are they in agreement with the common law interpretation. The intention of inland marine underwriters is expressed in the following definition, which is now inserted in many inland marine policies: "'Burglary' as used herein means the felonious abstraction of the insured property from within a building or room by any person or persons making felonious entry therein by actual force and violence of which there shall be visible marks made upon the exterior of such premises at the place of such entry by tools, explosives, electricity or chemicals."

The determination of what constitutes collision and overturn must depend largely upon decisions that have been made in the automobile portion of the fire and casualty insurance business. The actual coverage provided under these terms will be discussed in connection with transportation coverages (Chapters VI, VII, and VIII).

Court decisions regarding automobile insurance have been helpful in determining what is meant by such expressions as "member of the assured's family," which are used in inland marine policies issued to protect personal property.

Dependence on Fire Insurance Decisions

Although the answer may seem commonplace today, there have

[1] See Aetna Ins. Co. v. English, 204 S. W. (2d) 850 (Tex. Civ. App. 1947) for a case where proof of theft was entirely circumstantial and there was no threat of violence; nor was the custodian aware of the theft at the time it took place.

been questions whether fire insurance covers damage by smoke from a fire and loss from the water used to extinguish a fire. The courts have followed the principle that the loss is covered by the fire insurance if the fire was the proximate cause of the loss. That is, the fire must be the direct occurrence causing the loss without which there would have been no loss. If there had been no fire, there would have been no smoke, nor would there have been any water used to extinguish the fire. Therefore, the fire has been ruled to be the direct cause of loss when the actual damage was by smoke from a fire or water used to extinguish the fire. The cases in support of this doctrine are fire insurance cases [2] and are used to apply equally to inland marine losses.

As pointed out above, both fire and inland marine policies require that the assured shall use all reasonable means to save and preserve property endangered by fire in neighboring premises. Suppose the assured removes property from his threatened premises and the property is damaged as a result of the handling; does the fire insurance cover such loss? It has been held that fire insurance does cover property lost or damaged as a result of its being moved in an effort to preserve it from loss by a threatening fire.[3] This is a reasonable rule because the assured would be encouraged to leave his property in the path of the flames if damage occasioned by the moving would not be covered by the fire insurance.

There must have been an actual fire if the loss is to be paid under a fire policy. The presence of heat and flame usually are considered necessary for an occurrence to be classed as a fire. Certain articles, such as hay, grain, and bituminous coal, may heat spontaneously, but damage from such heating is not considered to be from fire unless the heat is sufficient to ignite the material and result in flame. Damage caused by heat from steam is not considered a fire loss when there is no actual ignition.[4]

The cause of the fire is immaterial as long as it was not set deliberately by the assured. Carelessness on the part of the assured is not a bar to recovery if the carelessness does not come within the clause described above concerning preservation of property during and after a loss or threatened loss.[5]

[2] Whitehurst v. Fayetteville Mutual Ins. Co., 51 N. C. 352 (1859); Boak Fish Co. v. Manchester Fire Assurance Co., 84 Minn. 419, 87 N. W. 932 (1901).

[3] Case v. Hartford Fire Ins. Co., 13 Ill. 676 (1852); White v. Republic Fire Ins. Co., 57 Me. 91 (1869).

[4] Gibbons v. German Ins. and Svgs. Inst., 30 Ill. App. 263 (1889).

[5] In the case of Karow v. Continental Ins. Co., 57 Wis. 56 (1883) the court stated:

Lightning is not fire. Most fire and inland marine policies cover lightning damage specifically, in addition to damage by fire. If, as in rare cases, fire insurance is provided without lightning coverage, the policy would cover damage done by a fire started by lightning but not damage by the lightning itself.

Closely allied to the question of lightning damage is that of damage by electricity artificially generated. At times it is difficult to distinguish between lightning (natural electricity) and artificially generated electricity, because a lightning storm may cause surges of current in wires carrying electricity for light and power. Inland marine policies frequently carry an "electrical apparatus" clause borrowed directly from fire policies. It excludes "loss or damage to electrical apparatus caused by electricity artificially generated unless fire ensues and then only for loss or damage by such ensuing fire." The intention is to exclude losses for burned out motors, light bulbs, radio tubes, transformers, and other electrical equipment when the occurrence is a breakdown of the insulation or a short circuit and not really a fire. These losses are considered to be wear and tear losses that age or overloading causes to occur eventually in all electrical equipment; they are not regarded as fortuitous losses of a kind that can be insured.

An example of a difficult case to decide was an actual occurrence in which all pieces of electrical equipment in a dwelling were burned out simultaneously, including the wiring. It was evident that there had been a surge of high voltage current through the wiring, but no fire had ensued, although there was evidence of heat along the wires in the partitions. Inquiry was made of the United States Weather Bureau and of neighbors to determine if there had been any thunderstorm in the vicinity. There was no evidence of a thunderstorm that day, and it finally was decided that the damage had been caused by a surge of high voltage current that had entered the house as the result of a breakdown in a nearby transformer station. This came within the electrical exclusion clause in fire and inland marine policies, and no loss was paid.

Windstorm, cyclone, and tornado form another group of specified perils covered by many inland marine policies. Wording and practices are borrowed directly from the fire insurance field.

A cyclone is an area of low barometric pressure with an attendant

"In the absence of fraud or design, there can be no question but that a fire insurance company is not relieved from liability on its policy by reason of loss by fire through the negligence of the assured or his servants."

system of winds revolving about the center. It covers an area of many hundreds of miles and characteristically brings in a succession of clear and rainy spells. A hurricane is a tropical cyclone and frequently is more violent than cyclones experienced in the North Temperate Zone. A tornado is a small circular area of wind revolving at an extremely high speed. It may be described as a violent vortex in the atmosphere and is attended by a pendulous, more or less funnel-shaped cloud. It is local in area and seldom covers more than a few miles, but can be the most violent of all windstorms. Frequently it will cut a path only a few hundred feet wide over a distance of ten to one hundred miles.

Insurance companies and the courts have tended to ignore the technical definitions of the various types of windstorm, and commonly have paid for any damage occurring as a result of the wind.[6] Inland marine carriers have followed the lead of the fire underwriters in this respect.

One important restriction common to windstorm coverages is that there must be an opening made by the wind before any loss is covered. Frequently the wind will drive rain, snow, or dust into a building through cracks in the structure, around windows, or between shingles on a roof. The insurance companies maintain that the damage is not payable under the windstorm coverage unless there is an opening made by the wind through which the rain, snow, or dust has been able to enter the building. Most policies contain a specific provision clarifying this interpretation. Inland marine policies contain provisions limiting the windstorm coverage in a similar way. An example is the motor truck cargo policy, which often provides windstorm coverage in the following words: "cyclone, tornado and windstorm (excluding loss or damage caused by rain, hail, sleet, snow, sand or dust, whether driven by wind or not)." It is customary for inland marine insurance companies to pay a claim where rain, hail, sleet, snow, sand, or dust enters the vehicle through an opening made by the wind.

Inland marine policies often provide coverage against riot and civil commotion, vandalism, malicious mischief, and damage caused

[6] See Metropolitan Ice Cream Co. v. Union Mutual Fire Ins. Co., 210 S. W. (2d) 700 (Mo. App. 1948), in which the court stated: "Windstorms, like any other kind of storms, vary in violence and policies must be construed to cover a windstorm of any force and turbulence. If an insurer wishes to limit its liability to damages caused by storms of certain measured velocity or duration the policy should so state."

by strikers and locked-out workmen. These are hazards of fixed locations in most cases, and the definitions of coverage depend upon decisions given under policies issued by fire insurance companies.

Similarities between Fire and Inland Marine Coverages

As inland marine underwriters moved into the field of insurance on property at fixed locations, they adopted more and more of the restrictive practices of the fire insurance and the burglary insurance companies that had been insuring such properties for many years. In addition to the "all risks" type of policy, inland marine underwriters began to issue policies covering against specified perils. There were few rules or court decisions in marine law and practice to cover specified perils coverage. Inland marine underwriters found themselves dependent upon decisions in fire and casualty cases to determine what their policies actually covered. A review of the important points in which inland marine practices depend upon fire and casualty practices and decisions will be helpful in understanding the mixture of ocean marine, fire, and casualty insurance that is called inland marine insurance.

The hazard of fire is not considered to be a peril of the sea, and protection against loss by fire is found as a specified peril coverage in ocean marine as well as in fixed location policies. It is one of the few perils specifically mentioned in ocean marine policies. However, the situations in which fires damage property insured by inland marine policies approximate more nearly the circumstances covered by fire insurance policies than those covered by ocean marine policies. Therefore, whenever a question arises about the exact nature of the fire coverage under an inland marine policy, there has been a tendency to depend upon fire policy interpretations to determine the coverage.

Among the risks not insured under many inland marine policies is loss or damage "caused directly or indirectly by neglect of the assured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises." This provision has been borrowed directly from the standard fire policy and is used in many inland marine policies in spite of a somewhat similar meaning of the "sue and labor" clause common to ocean and inland marine policies. It is intended to make clear that the insurance company will not pay

for any loss that is the direct result of the assured's neglecting to save goods in the path of a fire or other peril.

Fire and Casualty Practices in Inland Marine Underwriting

Many of the restricting conditions placed in inland marine policies are patterned after conditions of fire and casualty policies. Inland marine policies, for example, tend to provide that there can be no assignment of the policy prior to a loss without the written consent of the insurance company. This is in direct accord with the fire policy and is opposed to the accepted ocean marine practice of assignment prior to a loss. Assignment of a policy has the effect of making a new party to the contract. Fire and inland marine underwriters feel that they must have the right to consent to any change of party to the contract, since it is a personal contract and the moral hazard of the policyholder is an important factor in underwriting. This is especially true in the case of inland marine policies because the insured property is at risk while in the hands of the assured, whereas in the case of ocean marine insurance the insured property ordinarily is not under the control of the assured.

Cancellation provisions of inland marine policies follow closely those of fire and casualty policies and are different from those of ocean marine policies. Inland marine contracts usually provide for five-day notice of cancellation by the insurance company. Ocean marine contracts usually provide for forty-eight-hour cancellation notice, except that the cancellation does not apply to any voyage already begun. Ocean marine coverage continues on a voyage until the destination is reached. In this respect the needs of land transportation insurance are much different from those of ocean marine insurance. It might be difficult to arrange for insurance on a voyage already under way, whereas most land transit is completed within the five-day cancellation period provided by the inland marine policy.

The provisions of most inland marine policies concerning the reporting of losses, submission of proofs of loss, appraisal in case of disagreement between policyholder and company regarding amount of a loss, and the payment of loss are all closely related to the provisions of fire policies. These will be discussed in detail in Chapter XXI, but it is emphasized that practices as well as policy provisions follow closely those in the fire field.

Insurance companies have taken elaborate precautions to prevent the waiver of policy provisions by their representatives without the waiver's being evident in the policy contract. The nonwaiver provisions of the fire policy that have been copied in substance in almost all inland marine policies read:

> No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this company relating to an appraisal or to any examination provided for herein.

The problem of what constitutes waiver of policy provisions in the settlement of a loss is extremely important and will be considered in Chapter XXI. The problems of waiver of policy conditions in connection with inland marine coverages are resolved in accordance with practices and court decisions in the fire insurance field.

It is an established practice in fire insurance that each partial loss under a policy reduces the amount of insurance. This practice is expressed in many inland marine policies in the following words:

> Every claim paid hereunder reduces the amount insured by the sum so paid unless the same be reinstated by payment of additional premium thereon.

This is peculiarly a problem of insuring property at a fixed location. Property in transit usually is insured according to the whole value of all the property shipped, and there is no actual replacement of destroyed property. For example, under a transit policy the premium is based upon the total value of all the property shipped during the policy period. If some goods are lost, they may be replaced by other goods shipped at a later date, but the value of the replacing goods is included automatically in subsequent reports of property insured. In the case of property at a fixed location, the insurance is based upon a limit of liability, and the policy provides for reinstatement of the insurance used up in any loss payment.

The Marine Insurance Act, 1906 (English) provides in section 77, paragraph (1), in regard to ocean marine:

> Unless the policy otherwise provides, and subject to the provisions of this Act, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.

It is further provided in this Marine Insurance Act that in case of a total loss following a partial loss that has not been repaired, the assured can recover only the total loss.

The handling of the problem of "other insurance" in connection with inland marine insurance follows fire practices rather than American ocean marine practices. According to the provisions of American ocean marine policies, the first policy to be written is the primary insurance. Policies with subsequent dates contribute only after the first policy is used up. In other words, the policy purchased first is the primary insurance and pays the loss in full if it is sufficiently large in amount. This is contrary to the practice in the inland marine field, which follows the fire practice. All inland marine policies in effect at the time of a loss are considered to be contributing insurance, depending upon their provisions as to other insurance. The dates on which the policies became effective have no effect on their contribution to the loss. Ocean marine policies are considered contributing insurance only if they bear the same date.

The majority of inland marine policies contain an "actual cash value" clause, and losses are payable according to the actual cash value of the property at the time of the loss. This is in accordance with fire insurance practice and is in contrast to the practice in ocean marine, where policies frequently are written on a valued basis. Inland marine policies are written on a valued basis only when the value of the individual items can be determined in advance of a loss and when such valuation would be difficult or impossible following a loss. Examples of such policies are those covering fine arts and occasionally jewelry.

It has been explained in Chapter I that ocean marine policies frequently do not provide for payment of small partial losses; in fact, some ocean marine policies cover only in case of total loss. This is in contrast to the practice in inland marine of paying most losses in full and of using deductible and franchise clauses in only a limited way. This follows the practice in fire insurance of paying all losses regardless of size, subject to the provisions of any coinsurance clause that may be attached to the policy.

The fire insurance field also has seen a breakdown in the rigid principle of requiring full insurance to value if the assured is to recover the full amount of any loss. Many fire and inland marine policies are written without any coinsurance,[7] particularly in the personal coverages. Coinsurance provisions are difficult to apply on household effects because it is hard to determine the fair value

[7] See Chapter IV for a discussion of coinsurance in inland marine policies.

of furniture and clothing in use. Inland marine underwriters have followed the lead of the fire insurance departments in abandoning the use of coinsurance on household property.

In making rates the inland marine business has come to depend largely upon fire insurance practices. This development came about as inland marine insurance covered more and more property at fixed locations. The principal threat of large loss at a fixed location usually is by fire. Fire insurance rating bureaus have developed reasonably scientific methods of measuring the danger of fire loss. Their rates are the best that can be obtained and are used as a base for inland marine rates on such coverages as the jewelers' block, furriers' customers, personal property floater, and fine arts policies. In many cases the fire insurance rate makes up most of the total rate for coverage at a location. In sections of the country where windstorm is a severe hazard, the windstorm rates of the fire rating bureau are used as a part of the rate for the personal property floater.

It would be entirely possible for inland marine insurers to provide their own rates for location fire coverage, but they would have to duplicate work that is already being done by the fire insurance rating bureaus. Rates that vary according to the class or type of property can be used in territories and on classes of property where the hazard is reasonably uniform. In a few states personal property floater rates are on a flat rate, statewide basis, depending upon the different construction of dwellings and apartments. For example, all frame dwellings in communities having fire protection take one rate, brick dwellings take another, fire resistive apartments take another, and so on.

A class or flat rate system would not be satisfactory for jewelers' block coverage because the individual fire hazards of one jewelry store would be far different from those of others. A single rate for all jewelry stores, based on the loss experience of the entire class, would be too high for the well-protected store and too low for a store that is subject to a high hazard. Use of the rate promulgated by the fire insurance rating bureau avoids a duplication of work and saves the inland marine rating bureau the expense of inspecting and computing the fire portion of the rate. This saving of expense is important to the policyholder, because the expense of making rates eventually must be passed on to him as part of his insurance premium.

In computing the portion of an inland marine rate covering other than fire hazards, the companies and bureaus follow methods similar to those used by fire insurance rating bureaus. The jewelers' block and furriers' customers' rating schedules follow the same principles as those used in fire insurance rating schedules. To a basic rate charges for deficiencies are added and credits for desirable features are subtracted.

There has been considerable dependence upon casualty insurance rates when there is a theft or burglary hazard at fixed locations. When the loadings for the personal property floater were first set up, they followed rather closely the burglary rates for various cities and sections of the country.

The tendency in the inland marine business is toward manual rating of more and more classes. A manual rate is one set out in a book or pamphlet called a "rate manual." Such rates are usually fixed according to classes of property. An example is the rate for insurance on fur coats, which is the same in all parts of the United States. By the time insurance was declared to be commerce by the Supreme Court of the United States,[8] half of the premium from inland marine business was from classes upon which the rates are fixed by manuals or are computed according to schedules prepared by rating bureaus. The insurance business is finding that insurance on property at fixed locations as well as on property in transit frequently can be rated according to manual and class rates. It is more efficient to rate it in that manner because the business is being produced by agents all over the country. An agent in Topeka, Kansas, could not wait for an underwriter in a home office in New York or Hartford to quote him a rate for a personal property floater. He wants something in a manual that will enable him to quote the rate and premium when he first calls on the prospect. The situation is quite different from that in the ocean marine field, in which most of the business is written in a few ports and the underwriters are in close contact with the sources of the business.

[8] Prior to 1944 insurance was not considered to be commerce, and consequently was not believed subject to federal laws regulating interstate commerce. However, in 1944 the Supreme Court of the United States held that insurance is commerce. United States v. South-Eastern Underwriters Association *et al.*, 322 U. S. 533, 80 L. ed. 1440 (1944). See Chapter XXII for a discussion of the effect of this decision on the regulation of inland marine insurance.

Questions

1. Why were marine underwriters among the first to grant broad insurance coverage for property at fixed locations?
2. Name important points concerning which the interpretation of inland marine coverages depends upon court decisions on fire and casualty insurance policies.
3. Why do inland marine insurance policies usually exclude from coverage any damage to electrical apparatus caused by artificially generated electric current?
4. Why do inland marine underwriters feel that they must reserve the right to consent to an assignment of the policy prior to a loss?
5. Why is it considered unnecessary to provide for reinstatement of policies covering property in course of transit when the premium is based upon the total value shipped during the policy period?
6. Do inland marine practices in regard to other insurance follow ocean marine or fire insurance practices?
7. Why is a class rate system unsatisfactory for determining the fire portion of inland marine rates for such coverages as jewelers' block and furriers' customers?

CHAPTER III

Principles of Inland Marine Protection

Historical Background

Development of land transportation. Land transportation began to supplement water transportation in the early days of the railroads, and by the end of the nineteenth century the railroads were carrying the bulk of commercial traffic within the United States. The building of the railroads brought about the greatest change in transportation methods the world has ever seen. It was the first time in human history that men could ship large quantities of goods across dry land with reasonable speed and at low cost.

One of the most important effects of railroad expansion was the development of inland cities. No longer was it necessary for commerce to depend on waterways. Industry could be located close to raw materials and natural resources. Coal from the great inland deposits in West Virginia and Pennsylvania was shipped by railroad direct to the steel and iron centers. Finished products were sent in all directions to consumers in every city and town. Cities grew in the interior and factories sprang up all over the country. In less than a hundred years this completely new method of transportation had outstripped all the older methods, and it dominated American industry.

It is a tribute to the early vision and responsibility of the railroads that there was little demand for insurance on inland transportation. Soon after the railroads were established as freight carriers, they assumed the responsibility of delivering goods safely. By the time commerce was dependent for its existence upon the safe delivery of raw materials and finished goods, the liability of the railroads as common carriers was defined so clearly that shippers gave little thought to insuring property in transit.

Shipments were lost or destroyed occasionally, but a claim could be made against the railroad. It was easy for the shipper or consignee to make a claim, because a freight agent was located at the

railroad office in every town. The railroads were wise in accepting the responsibility, and their settlements were sufficiently prompt and fair for industry not to feel the necessity for any other protection.

Effect of wartime conditions. The situation began to change during World War I. The additional burden of carrying war munitions and supplies overloaded the railroads, and it became difficult for them to keep their claim adjustments up to date. With the entry of the United States into the war, the Federal Government took over the railroads. It was not clear at the time whether the responsibility for lost or damaged property rested with the railroad corporations or with the government. The overloading of the railroads plus the presence of governmental red tape made the collection of freight claims a difficult task. Claims were many months or even years in being processed. The apparent division of responsibility between the government and the railroads caused many claimants to doubt the value of legal suits.

An increasing number of industries found it advantageous to buy insurance on their property in transit, so that they could collect for lost goods without delay and could let the insurance companies worry about collecting from the railroads and the government. The cost of the insurance was unimportant to many policyholders, because war supplies were being produced on a cost-plus basis and the insurance premium was passed on to the government.

During this period, transportation insurance was provided by ocean marine insurers, largely in connection with their ocean marine policies. No separation of inland from ocean marine coverages was made, and all the premium was reported as ocean marine. There was a direct continuity from the ocean marine coverage to this inland coverage. Problems were similar in the two types of transportation, and only minor adjustments were necessary to fit the insuring of land transportation.

Shipment by motor truck. Another factor that hastened the development of land transportation insurance was the use of the motor truck. The truck was not used for cross-country hauling until the transportation shortages of the war and postwar years made it economical. During the 1920's the motor truck became an established part of our transportation picture. Its ability to make overnight delivery between cities was in sharp contrast to the several days required for railroad handling of less-than-carload lots

of freight. If the running time between cities was only a few hours for a motor truck, there might be a saving of several days over the time required for shipment by rail.

It soon became evident to shippers that motor truck transportation had its disadvantages. Claims for lost or damaged articles were uncertain of payment. Many of the truck lines were operating on extremely limited capital, and a large claim for damages would throw such lines into bankruptcy. Sometimes the trucker could not be found when a claim was to be made. Trucks could be driven to another part of the country to start a new business if the claims became too numerous. Merchants and factories felt that they needed the facilities of the new mode of transportation, but felt also that they needed insurance protection against loss of goods being hauled by truck. The answer was provided by the insurance companies; the marine underwriters found an increasing number of prospects for transportation insurance.

The insuring of property in transit by land conveyance posed many new problems for insurance companies. Fire insurance departments had learned to appraise accurately the hazards to property located in a building, and casualty companies were accustomed to estimating closely the chances of loss by burglary. Neither of them were in a position to judge the probabilities of loss when the goods were being carried over rail or highway at speeds of fifty miles or more an hour. The coverages then being written in specific policies to cover loss by fire, windstorm, or theft were entirely inadequate, because the merchandise might be stolen, smashed in a collision, or dumped into a river as the result of a wreck. Marine underwriters, on the other hand, were accustomed to insuring goods against loss by "perils of the sea," and they already had accumulated some experience in connection with land hazards under the "warehouse to warehouse" clauses of ocean marine policies. It was a natural development that the new forms of land transportation should be insured through marine departments of insurance companies. In order to distinguish this new type of coverage from the ocean marine policies, it became customary to designate these as "inland marine" policies.

Postwar conditions. Other developments following World War I brought about a demand for another type of inland marine insurance coverage. There was a spreading of the country's wealth at about the same time that a postwar crime wave spread over the

country. More people had diamond rings and fur coats, and more people were interested in stealing them.

Fixed location insurance covered against relatively few hazards, whereas inland marine underwriters were able to write floater policies giving "all risks" coverage on personal effects. Fur coats and jewelry had to be worn to be useful, and they were subject frequently to transit hazards. The personal effects floater policy soon became a popular coverage for people of means who traveled for business or pleasure.

Broad coverage under a single policy began to appear desirable to many property owners. They wanted to know whether a similar full coverage policy could be issued on property at fixed locations. The fire insurance departments and casualty companies were handicapped by the limitations on their underwriting powers. Many states prohibited a fire insurance company from writing what was designated as a casualty coverage, and the casualty companies could not write a fire coverage. Thus it was impossible in many states for either the fire insurance department of a company or a casualty company to write a full coverage policy.

The marine departments of the companies did not suffer under any such prohibitions. Their underwriting powers were practically unlimited. There was no definition of what constituted a transportation risk, and the imaginations of ambitious inland marine underwriters led to some ingenious interpretations.

Jewelers had long been subject to a greater theft hazard than other merchants, and London insurers had provided jewelers with a broad insurance policy that incorporated both fire and casualty protection. The marine departments of American companies saw an opportunity to fill this need in the American market. Owners of bridges needed protection not only from fire and windstorm but also from ice jams, from ships' running too close and colliding with the bridge, and from a host of unpredictable hazards. Marine underwriters came to the conclusion that such an "all risks" policy could be written, especially since a bridge has something to do with transportation—that is, it allows transporting vehicles to cross it. Neither the fire nor the casualty insurance companies objected strenuously to marine underwriters' insuring bridges or jewelers because they believed that broad insurance coverage on bridges and jewelry stores was a hazardous business.

The 1920's saw another development in business that was to

affect the insurance of transportation risks. Ambitious store owners saw the savings to be made by quantity purchases, and they branched out. This process spread throughout the country, and the great chain store systems developed.

Encroachment of inland marine into fire and casualty fields. Chain store proprietors became familiar with broad transportation insurance policies because they insured their goods in transit from warehouse to store and from one city to another. The idea of a single policy instead of dozens or hundreds of policies had a practical appeal. Inland marine underwriters were willing, and soon some of the big chains had their entire stocks insured under marine policies. Inland marine underwriters reasoned that this was a transit risk, inasmuch as the goods were insured during transportation from warehouse to store as well as in the store, where they did not remain very long before they were sold.

The fire insurance departments of the companies began to see huge amounts of premium going to the inland marine departments. Much of the property covered by inland marine policies was at fixed locations and was subject to little or no transportation hazard. For example, factory and warehouse stocks were insured under inland marine policies when they were at fixed locations for many months at a time, the only transportation hazard being a brief exposure when the goods finally were moved a few feet to be loaded on a purchaser's truck.

Fire underwriters felt that they were being deprived of premiums rightly theirs, and casualty underwriters similarly felt the loss of burglary premiums. In many cases it was charged that broad inland marine policies protecting against loss by fire, burglary, windstorm, and transportation hazards (or perhaps against "all risks" of loss or damage) were written at rates less than the fire companies were permitted to charge for the fire coverage alone. Fire underwriters were not able to compete on price or forms, because they were required by law or by the rules of fire rating bureaus to use only approved rates and forms.

It is clear that the standard policy laws relating to fire insurance and the strict regulation of fire rates prevented the fire companies from giving the policyholders the protection they needed. Inland marine underwriters, being unhampered by restriction and rate regulation, could prepare a policy to fit the assured's needs.

An intense controversy arose within the insurance business. The

fire insurance departments of the companies saw that they would have to provide some way of covering the stocks of chain stores and other multiple location risks. The answer of the fire departments was the organization of the Interstate Underwriters Board in 1929. This Board established rates and forms for interstate multiple location properties; the resulting coverages replaced the inland marine floaters in so far as the coverage of chain store property at fixed locations was concerned.

The establishing of the Interstate Underwriters Board helped the fire companies to give the chain stores blanket coverage on a fluctuating basis over an entire chain. However, this relieved only one part of the controversy between marine underwriters on the one hand and fire and casualty underwriters on the other. Inland marine underwriters were insuring many properties that the fire and casualty underwriters felt should be insured under fixed location coverages.

Limitations on Inland Marine Underwriting

It became evident to all sections of the insurance industry, as well as to state regulatory officials, that some line of demarcation would have to be drawn between the inland marine business and other sections of the insurance industry. The laws regulating the insuring powers of companies were drawn in general terms and it did not seem wise to redraft them. No matter how carefully or rigidly such laws were drawn, they would always be subject to interpretation, and it would be difficult to establish an accurate division between inland marine and other coverages.

The insurance companies were aware of the necessity for resolving the controversy, and numerous discussions were held between the marine, casualty, and fire insurance underwriters. The first actual agreement between different segments of the business was the Casualty-Marine-Merchandise Agreement between casualty and marine underwriters, which became effective July 1, 1930. This agreement established some principles between casualty and marine underwriters.

During this same year marine underwriters recognized the need for more uniformity in their own practices. Not only was there intense competition with other portions of the insurance business, but there was severe competition among themselves as well. Com-

petitive rates were inducing the companies to write the business at rate levels allegedly below the cost of doing business.

More than 100 insurance companies writing inland marine lines joined together in the formation of the Inland Marine Underwriters Association, which came into official existence on January 1, 1931. The purposes of the I.M.U.A. were to develop intelligent underwriting to promote simpler and more nearly accurate rating methods, and to investigate hazards as well as promote means of reducing them. The Association adopted policy forms and clauses and established rating methods for the different types of business that underwriters believed could be rated on a schedule or according to the class of property. This was an ambitious program for the Association, in view of the confusion and sharp competition existing in connection with inland marine insurance at that time.

Although establishing the Inland Marine Underwriters Association was an important step toward stabilizing the inland marine business, there remained many other factors that could not be controlled by an organization within the inland marine segment of the business. For one thing, some companies writing inland marine business were not members of the I.M.U.A. and were not controlled by its efforts at stabilization.

Intense competition between inland marine and fire and casualty underwriters continued to result in conflicting policy provisions and inadequate rate levels. The former made it difficult for the public to determine whether policies were properly worded; the latter were a threat to company solvency.

During the next year and a half, in 1931 and early 1932, many conferences among fire, casualty, and marine underwriters sought to establish a clear definition of what could be insured under an inland marine policy. These were urged and sponsored by officials of the New York State Insurance Department. Even though the principal companies were a party to these discussions, it seemed evident that they were not in a position to agree on a definition and to bind all companies without some official action. In order to make the best ideas of the industry effective, New York State Insurance Superintendent Van Schaick, on July 25, 1932, issued a tentative ruling on marine and transportation underwriting powers. On September 30, 1932, he issued a final ruling that defined the circumstances under which property could be insured under a marine or inland marine policy.

It was apparent that there would be many borderline cases under any general definition of marine insurance, and some authority would be necessary to make rulings and interpretations. At the request of Superintendent Van Schaick, on November 3, 1932, the American Institute of Marine Underwriters set up its special marine committee as a committee on interpretation and complaint. The ruling of the New York State Insurance Superintendent and the work of this committee were effective for New York state only, but they did tend to stabilize further the practices in the inland marine field, building upon the work of the Inland Marine Underwriters Association.

The "Nation-Wide Definition"

There was a strong feeling in the insurance industry and among state insurance superintendents that some action should be taken on a nationwide basis to establish the extent of the underwriting powers of marine underwriters. At a meeting of the National Association of Insurance Commissioners in December, 1932, a proposed nationwide definition of marine insurance was submitted.[1] This was referred to a committee of the Commissioners' Association for a report at the next meeting. Extensive discussions followed during the first half of 1933, and the commissioners' convention on June 2, 1933, adopted the "Nation-Wide Definition and Interpretation of the Insuring Powers of Marine and Transportation Underwriters."[2] This is the document commonly known as the "Nation-Wide Definition." Adoption by the commissioners' convention did not make it effective in any state, but it served as a recommendation to the individual states that it be adopted officially and be given the force of state law or insurance department ruling. This was done by a majority of the state insurance departments and the "Nation-Wide Definition" became effective in thirty-four states. The state of Texas has a special definition that is slightly different in some particulars.[3]

[1] The provisions of this proposed definition were based largely upon the ruling made effective in New York state on September 30, 1932.

[2] See Appendix A for the text of this definition.

[3] The Texas definition differs from the "Nation-Wide Definition" principally in the following particulars:

1. It is titled and refers in the text to "Inland Marine and/or Transportation Insurance," whereas the "Nation-Wide Definition" does not refer to "inland" marine.
2. The Texas definition sets out the rules as those which permit "the inclusion

All insurance companies writing marine or inland marine insurance in the United States were asked to become signatories to the "Nation-Wide Definition," and a majority of such companies did. The "Nation-Wide Definition" is effective in the case of nonsignatory companies also, because it has the effect of state ruling wherever it has been adopted.

Although the "Nation-Wide Definition" is a document filling several pages, it is expressed in general terms. It describes the situations or conditions that would qualify a quantity of goods or a piece of property to be insured under a marine policy. It does not distinguish between ocean and inland marine insurance. Some types of policies are mentioned specifically as permitted or prohibited as marine forms, but the specific provisions are not sufficient to cover all cases.

It was clear from the beginning that in many cases the underwriter would be in doubt whether marine insurance would be permissible under the "Nation-Wide Definition." Some machinery for interpretation had to be set up. The agreement in connection with the "Nation-Wide Definition" provided for a "Joint Committee on Interpretation and Complaint." The Joint Committee consists of twelve persons, five of whom represent the marine and inland marine viewpoint, five the fire departments of companies, and two the casualty companies.

When the underwriter of a signatory company, or a state insurance department, is in doubt whether property in a specific situation qualifies for marine or inland marine coverage, he may submit the question to the Joint Committee. Occasionally a signatory company makes a complaint to the Joint Committee that another signatory company has issued a policy in apparent violation of the "Nation-Wide Definition." All decisions of general interest are bulletined to all signatory companies and to state insurance

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of fire, windstorm and hail insurance" under inland marine and transportation policies. It seems to ignore any possible conflict with casualty insurance, perhaps because Texas laws permit insurance companies to qualify to write both fire and casualty lines in the same company. It makes no reference to the "misapprehension or dispute among Fire, Marine and Casualty Insurers" mentioned in the preamble to the "Nation-Wide Definition."

3. The conditions under which marine or transportation policies may cover are almost identical with those found in the "Nation-Wide Definition," except that the personal property floater is permitted specifically. Neon signs and street clocks are permitted specifically, and the Texas definition does not contain the list of conditions under which marine and transportation policies may not cover.

departments. More than 100 interpretative bulletins have been issued by the Joint Committee, and it has advised informally on many additional inquiries. The Committee considers only actual cases on which specific data are submitted; it will not consider hypothetical cases.

Throughout the "Nation-Wide Definition" there runs the principle that property must be in transit, or in the technical state of transportation, in order to qualify for coverage under a marine or inland marine policy. It was regarded as necessary to make many compromises between the various insurance interests involved, and it also was held necessary to recognize certain long-established practices in the transportation field.

Among the five types of property set out by the "Nation-Wide Definition" as eligible for coverage under marine or inland marine policies, the first two tie in closely with practices in ocean marine commerce. Imports and exports both are permitted to be covered under marine or transportation policies just as long as they retain their peculiar characteristics. Whenever an import reaches its destination, it ceases to be a proper subject for marine or transportation insurance. Similarly, an export becomes a proper subject just as soon as it is designated as an export or is being prepared for export. An exception is made concerning established methods of insuring certain commodities, such as cotton. Cotton in bales had been insured under marine policies for many years, regardless of whether the particular bales of cotton had been designated specifically for export.

Domestic shipments form the third type of property that may be insured under a marine or transportation insurance policy. It was believed necessary to specify a length of time after which a domestic shipment would no longer be considered "in course of transportation," and a period of thirty days was established. This was a compromise and was based largely on the provisions found in many ocean marine policies that coverage does not extend beyond a thirty-day period from the time goods are unloaded from an ocean-going vessel.

The fourth classification of property held to be a proper subject for marine or transportation policies is a class known as "instrumentalities of transportation and communication." These consist of bridges, tunnels, and, with some restrictions, piers, wharves, docks, and slips. Also included within this classification by inter-

pretation of the Joint Committee have been transmission lines, aqueducts, radio towers, and traffic signals. The decision to permit the insuring of these instrumentalities of transportation and communication under a marine or transportation policy was a recognition of a long-standing practice in the business. Such insurance had been written by marine underwriters for many years, largely because fire underwriters did not care to give broad protection on this type of property. Buildings used in connection with bridges and other instrumentalities of transportation and communication may not be insured under a marine or transportation policy, according to the "Nation-Wide Definition."

The fifth type of property eligible for a marine or transportation policy is designated as "personal property floater risks." This must be distinguished from what is known as the "personal property floater" policy. "Personal property floater risks" in the "Nation-Wide Definition" refers to personal property as distinct from real property. Not all personal property may be insured under a marine or inland marine policy. The "Nation-Wide Definition" contains a long list of individual marine insurance forms that may be issued to cover property of individuals, business property, and property in the hands of a bailee. Most of these policy forms are intended to cover property of such a nature that it can be used in many different locations. Some of the designations were the result of practices that had stood for many years in the marine insurance field. Fine arts floaters are specifically permitted, even though the objects may not move from a fixed location from one year to another. Jewelers' block policies are permitted specifically, although they are intended primarily to cover stocks of jewelry at a fixed location. For many years jewelers' block insurance had been written by London underwriters on a broad coverage basis. Several years previous to the establishment of the "Nation-Wide Definition," this type of coverage had been defined by law in many states as a permissible marine coverage. (Many state laws also permitted casualty insurance companies to write jewelers' block coverage.)

A final section of the "Nation-Wide Definition" specifies several types of property that may not be insured under a marine or transportation policy. One of the specifically prohibited forms is the "personal property floater," referring to the policy generally called by that name and not to the generic class of forms covering personal

property. This provision has been modified in all states and the personal property floater can now be written everywhere.

Certain principles are present throughout the "Nation-Wide Definition":

First, an element of transportation must be present if property is to be eligible for insurance under an inland marine policy. This may seem a bit farfetched in such cases as those involving bridges and tunnels, but they are held to be insurable under an inland marine policy because they are instrumentalities of transportation.

Second, property which is located on the premises of an owner is not in transit. Therefore, most policies must exclude coverage on the premises of the assured. Here again, as it has been pointed out, custom and compromise resulted in the permission of marine protection for some location coverages, as in the case of jewelers' block policies, fine arts policies, and policies covering electric and mechanical signs.

There are provisions for many specific floaters in which these two principles seem to be violated. In most cases these inconsistencies result from the recognition of customs in the business. There is also a recognition that owners of many types of property need "all risks" protection. The policyholder is believed to be entitled to buy broad coverage in a single policy, and inland marine underwriters are willing to write such coverage.

Interpretations of the "Nation-Wide Definition." Some of the interpretations issued by the Joint Committee on Interpretation and Complaint are exceptionally interesting because they illustrate the principles followed in drafting the "Nation-Wide Definition" and in interpreting portions of it. For example, in response to a submitted question Interpretative Bulletin No. 5 ruled that stained glass windows may be insured under a marine or inland marine form of policy only when they are bona fide objects of art. Risks about which other submitted questions were decided on the basis of whether the property may be considered fine art included sun dials, coins, and drawings or etchings.

An interpretation was necessary in connection with motor vehicles. Although motor vehicles obviously are movable, and in spite of the fact that the first insurance policies on automobiles were marine policies, by 1933 the business of automobile insurance had become a completely separate part of the insurance business.

It was intended that automobiles should continue to be insured separately and not be covered under marine policies.[4]

When a question arose concerning certain other types of vehicles, it was set forth in Interpretative Bulletin No. 21 that a marine or inland marine form of policy may not be issued on auto homes, trailers, and semitrailers except when hauled by tractors not designed for highway use. It also was decided that certain types of farm and contractor's equipment tractors that are not designed for use on the highway can be insured under a marine or inland marine form of policy.

The Joint Committee was asked whether a form covering the legal liability of a warehouseman, packer, forwarder, common carrier, or bailee on account of goods or merchandise stored or held in his care, custody, or control at a fixed location, including transit thereto and therefrom, might be insured under a marine or inland marine form of policy. The Joint Committee took the view that this is a storage risk and cannot be covered under a marine policy. A later decision on warehousemen's liability was to the effect that it may be insured under a marine or inland marine form of policy only if the goods or merchandise are eligible for marine coverage under the "Nation-Wide Definition."

The Joint Committee has ruled that water pipe lines and power transmission lines may be insured under a marine or inland marine form of policy, under certain conditions of coverage, and that radio towers also may be insured.

It was decided that a street lamp is not an instrumentality of transportation and cannot be insured under an inland marine policy. However, floodlights and code beacons used as a means of assisting aerial navigation and transportation may be insured if buildings connected with them are excluded. "Stop and go" signals used for traffic control may be insured as instrumentalities of transportation.

A water tower may not be insured under a marine or inland marine form of policy, perhaps on the theory that a water tower is primarily a storage place and not an instrumentality for the transportation of the water.

Some of the most troublesome questions concern property being

[4] The insurance laws of several states include automobile insurance as part of marine or inland marine insurance. However, it is universal practice for automobiles to be insured under policies specially designed and not under marine policies.

processed and what types of processing can be considered proper subjects for marine coverage. The Joint Committee has issued several versions of Interpretative Bulletin No. 104; these bulletins include a long list of processing operations considered proper subjects for marine coverage.

Modification of the "Nation-Wide Definition." The "Nation-Wide Definition" has not remained static, but has been modified in one or more particulars in every state that has adopted it. The most important change is the one permitting the writing of the "personal property floater" policy; this has been made in every case. Other modifications effective in many states permit the covering of silverware on the premises of the assured, the issuing of a cold storage locker bailee policy, and the extension of a furriers' customers policy to cover outside the storage premises. These modifications are made by ruling of the state insurance departments and become effective only in the states where such action is taken. All insurance companies, including the signatory companies, may take advantage of the modifications in those states.

General effects of the "Nation-Wide Definition." Since the adoption of the "Nation-Wide Definition," the acrimonious disputes of the 1920's have abated, but there remains a strong competition between the different sections of the insurance business. A large amount of premium was diverted from the inland marine departments of the companies immediately after the adoption of the "Nation-Wide Definition." In 1931 inland marine premiums amounted to 5.64% of the total fire insurance company premiums written in the United States. It was in 1931 that the first effective restriction on inland marine underwriters was felt, and in 1932 inland marine premiums amounted to only 4.64% of the total fire company premiums. It appears that the demarkation set up by the "Nation-Wide Definition" and the arrangement that preceded it resulted in a loss to the inland marine underwriters of six or seven million dollars of premiums a year. There has been a healthy growth of the business since that time, and the loss was regained in a few years. Inland marine coverages were stabilized and the industry found itself in good condition to stand the impact of the rate regulatory legislation that followed the United States Supreme Court decision declaring insurance to be commerce.

The stabilization brought about by the "Nation-Wide Definition" has enabled policyholders to determine more easily the adequacy

of their protection under inland marine policies. Standardization of coverages, where possible, helps companies and state authorities to determine that rates are adequate but not excessive.

Although the "Nation-Wide Definition" served to smooth out some of the difficulties between fire, marine, and casualty companies in the writing of insurance, it did not prevent these branches of the business from issuing overlapping coverages. Adjusters and the loss departments of the companies had great difficulty in determining which was the primary insurance when each of several policies covering a property had "excess insurance" clauses that attempted to make the other policy the primary coverage. Many times a policyholder would be left waiting for his claim settlement while the insurance companies argued to decide which one would pay the loss. Eventually the fire, casualty, and marine companies decided upon several "agreements of guiding principles," which set out rules by which such overlapping coverage questions would be decided. These agreements will be discussed in Chapter XXI in connection with the handling of inland marine claims.

Questions

1. Why was there little demand for insurance on goods being shipped by railroad prior to World War I?

2. What situations during and following World War I brought about an increased need for insurance on goods in transit by land carrier?

3. What restrictions on the underwriting powers of fire and casualty insurance companies helped inland marine underwriters to expand their activities?

4. How was the organization of the Interstate Underwriters Board intended to restrict the activities of inland marine underwriters?

5. What were the purposes of the Inland Marine Underwriters Association?

6. What is the purpose of the "Nation-Wide Definition"?

7. Describe the functions of the Joint Committee on Interpretation and Complaint.

8. What types of property are set out in the "Nation-Wide Definition" as eligible for marine insurance coverage?

9. What principles are present throughout the "Nation-Wide Definition"?

10. Name several important compromises that were made in drafting the "Nation-Wide Definition" in order to recognize established customs of the inland marine insurance business.

11. Have the effects of the "Nation-Wide Definition" been desirable?

PART II
Nature of Inland Marine Protection

CHAPTER IV

Basic Inland Marine Coverage

The Inland Marine Policy Contract

Elements of an insurance contract. An insurance policy is always a contract between persons. This fact is not understood by most policyholders, and the misunderstanding results in confusion concerning the obligation of the insurance company and of the policyholder. The persons who are party to the insurance contract may be either actual persons or corporations. The contract is always personal and is not a contract attaching to the property insured. The property that is the subject of insurance may change many times during the term of the insurance contract, as in the case of mercantile stocks or property being carried by a motor truck operator.

The insurance protects the policyholder just so long as the policy description fits the property he has at the time of the loss. The only exception to this rule occurs when the insurance covers scheduled property, such as a specifically described piece of jewelry. Even in this case the policy is a contract between persons and does not follow the property. If the property is sold to another person not named in the policy, that particular property is no longer protected.

Certain elements must be present to make any contract legal and binding upon the parties thereto.

Both parties must be legally competent to enter into the contract. Ordinarily a person who is not of age or a person of unsound mind is legally incompetent to be party to a contract.

A consideration must pass in connection with all contracts. In the case of an insurance policy, the consideration is the premium paid by the policyholder in return for the promise of the insurance company. Frequently insurance policies provide that the contract is issued "in consideration of representations made by the assured" as well as in consideration of the premium paid.

There must be a meeting of the minds of the parties to the

contract. That is, the two parties to the contract must understand each other, and the contract must express what both of them have in mind when the agreement is made. If one party wilfully conceals essential facts that the other party should know or if there is fraud on the part of either party, there is not a meeting of the minds, and the contract will be void. An important purpose of the warranties discussed in Chapter I is to make certain that each party understands the intentions of the other.

An insurance contract (policy) must be executed by the insurance company and accepted by the policyholder; this action is comparable to the signing of a contract by the two parties in other legal contracts. The signatures of the principal officers of the company are by facsimile or printed signature, and the actual execution of the document ordinarily is by an authorized agent who is given power by the company to countersign.

The fact that an insurance policy is signed by only one party to the contract may be responsible for the fact that it is not generally thought of in the same way as other contracts in which both parties sign the agreement. However, the fact that the policyholder is not required to sign the policy does not make it any less binding upon him, because this obligation is ratified by the assured's acceptance of the insurance contract.

The assured must have an insurable interest in the property covered. Inasmuch as this is a contract to pay money in certain eventualities, the insurable interest must be a financial one. An insurance company cannot issue a policy to an individual agreeing to pay an amount of money upon the occurrence of an event if that event would not cost the assured any money. The lack of a financial insurable interest would make such an insurance policy a gambling contract and legally unenforceable.

One of the best definitions of insurable interest is that appearing in the insurance laws of New York state: "The term 'insurable interest,' as used in this section, shall be deemed to include any lawful and substantial economic interest in the safety or preservation of property from loss, destruction or pecuniary damage." [1]

It will be seen that this is an extremely broad definition and that an insurable interest can be any financial interest or risk of loss from the occurrence of a certain event.

Binders. Legal contracts may be either oral or written. An oral

[1] Section 148.

contract may be difficult to prove, especially if there are no witnesses other than the parties executing the contract.

There is a period of oral contractual relationship in connection with many insurance contracts. The agent or salesman persuades the prospect that he needs certain coverage, and the prospect agrees. From this point until the policy is written and accepted by the policyholder, the contract is oral. This is known in the insurance industry as an "oral binder." Because it is difficult to prove what two people may have discussed, it is extremely important that the binder be confirmed in writing at the time the agreement is made or as soon thereafter as possible. It is even more important in the case of inland marine insurance than in the case of some other coverages because standardization is lacking. If a standard policy contract is required by state law, as in the case of fire insurance, the provisions of the standard contract would be presumed to apply to any oral agreement. If there is no standard policy contract, this presumption is not present and it probably would be more difficult to resolve any misunderstanding regarding the terms of the oral contract.

Reformation of a policy. Once the policy contract has been placed in writing, it is presumed to be the entire agreement between the parties unless there is strong evidence to the contrary. In order to emphasize this point, most insurance policies contain a statement to the effect that no agent has authority to modify the contract except in writing. When disputes arise in connection with the coverage under a policy, it sometimes is asserted by the policyholder that the agent told him the policy provided certain coverage not specified in writing in the contract itself. In the absence of clear evidence to the effect that the agent had made an agreement to have the policy extended, the contention of the policyholder probably would not hold, because the written contract generally is presumed to be the entire agreement.

A reformation of the policy contract occasionally may be secured by one party to the contract. It is necessary to show that the contract does not express the intentions of both parties. If it can be proved to the satisfaction of a court that there was not a "meeting of the minds" and that the intentions of both parties at the time the contract was drawn were different from what the contract actually states, the court might rule that the contract be reformed and made to express what the parties had in mind at the time it

was drawn. This is difficult to prove and ordinarily the written contract is the entire agreement. Most insurance court cases revolve around a difference of opinion concerning the meaning of the written contract rather than over an attempt to secure reformation. In securing reformation of a contract, it is not sufficient to show that it does not express the intention of one party; it is necessary to show that both parties intended something other than what is written in the contract.

Generally a court will construe any ambiguity in an insurance policy against the insurance company. This is based on the idea that the company prepared the wording of the policy and would have used a more restrictive wording had it intended to specify the meaning unfavorable to the policyholder.

Make-up of an insurance policy. The physical form of an inland marine insurance contract does not differ greatly from that of other insurance policies covering damage to property. There is usually a printed piece of paper called the "policy," which is the document containing most of the conditions and clauses common to inland marine contracts. This policy (1) includes the insuring clause (which states the consideration for the contract), (2) names the parties, (3) states the term of the insurance, (4) contains the facsimile signatures of the principal officers of the insurance company, and (5) contains the actual countersignature of the issuing or countersigning agent.

No state requires by law a standard form of inland marine insurance policy contract. This is in contrast to the fire insurance business, in which a special policy contract is required by state law or administrative ruling in most states. The inland marine rating bureaus have tended to standardize on the "scheduled property floater policy" for those types of inland marine coverage to which the clauses in this policy are applicable, but this contract is used for only about half of the inland marine policies.

A sheet of paper or document called the "form" is usually attached to the policy. The form (1) includes a description of the property insured, (2) delineates the hazards insured against, (3) contains the exclusions or modifications, and (4) specifies any territorial limits which may be applicable to the coverage.

This form must be countersigned by an authorized agent of the company. In most states the agent must be a resident of the state in which the subject of the insurance is located.

Other endorsements may further extend or modify the coverage. These are attached to the policy and form, and each of them also must be countersigned by an authorized agent.

Some inland marine contracts are printed wholly on single pieces of paper, with no distinction between policy and form. This is true when the contract is short and is common, for example, with personal jewelry and fur policies.

There is great flexibility in the policies, forms, and endorsements that may be used in inland marine insurance as contrasted to fire insurance. This is necessary because of the great variations in the nature of property that may be covered under an inland marine policy and because of the many different circumstances under which the property may be insured. Uniformity in coverage has not been feasible for property in transit between different parts of the world.

Preparing an inland marine policy. The names of the parties to an insurance contract must be stated correctly. In many cases the name of the assured is not secured and inserted correctly. For example, a transportation company may have one corporate name and may be operating under another name in so far as the public is concerned. It is good practice to follow the corporate or individual name of the assured by the words "doing business as" and the name by which the organization is known. This becomes extremely important in connection with motor truck operations when a truck line has purchased more than one franchise and may be operating under different names in different territories.

When it is necessary to cover more than one interest under a policy, the full names of all interests should be stated correctly. If names are stated incorrectly or incompletely, the assured may not have the coverage he needs and desires or the insurance company may be exposed to liability it does not contemplate in the rate and in its underwriting.

The coverage intended for a policy may be printed in the form attached to the policy, but frequently additional information concerning the coverage must be inserted specifically by the policy writer.

Territorial limits are important in many policies, particularly transportation policies, and a certain location may be specified for a portion of the coverage. Such conditions must be inserted correctly because the rates often are dependent upon the territorial limits and the location of the property.

The wording referring to the term of the policy, which is stated in the contract, is extremely important when a loss occurs near the time of inception or expiration of the contract. When the policy states a day upon which the coverage commences and another day upon which the coverage ends but does not specify the time of day, it is understood that the policy term starts at the beginning (immediately after midnight) of the day stated as the inception date of the policy and expires at the end (midnight) of the day stated as the ending date for the coverage.

Many policies state that coverage begins and ends at noon. Unless the time of day is further explained in the policy, there is a possibility of controversy as to whether it refers to sun time, standard time, or daylight saving time, and also whether it refers to the time at the place of the loss or at the place of issuance of the policy. This is particularly important with inland marine policies because they cover property in course of transportation. There may be several hours' difference in time between the place of issuance and the place at which any loss occurs. A satisfactory wording to cover this situation as contained in the "scheduled property floater policy" used by many companies is "at noon, standard time at place of issuance." The place of issuance is the location where the agent countersigns the policy.

A description of the property or interest insured is another important piece of information to be filled in by the policy writer. It is necessary to make a clear distinction between a policy that provides coverage relating to physical goods and insurance to protect a certain interest, such as legal liability for loss of or damage to property. A policy issued to an owner of property is intended to indemnify the owner for loss of or damage to the property. If the property is destroyed by a peril named in the policy, the loss is payable to the assured. However, an inland marine policy may be issued to a person who does not own the property but who has it in his custody; in this case the policy may be issued to cover his legal liability for loss or damage. In some cases, as in a bailees' customers policy, the legal liability of the bailee is insured and the value of the goods also is insured as to the owner. This is a dual interest policy. The rates vary according to the goods or interest covered, and it is extremely important that the description of the goods or interest insured be accurate in order that the rate contemplated may be in conformity.

The description of the goods or interest may be in general terms; a policy issued to a motor truck operator, for example, may describe the cargo as "general merchandise." In other cases the description may include the type of merchandise. In connection with specifically described property, such as furs and jewelry, the description may be in considerable detail and apply only to a specific piece of jewelry or fur garment.

When the business or nature of property belonging to the insured may vary, it is necessary to use a wording that could be extended to property other than that specifically described, provided the insurer intends to grant that coverage. For example, a policy that covers a stock of "dry goods" might be interpreted as not covering items of hardware if they are included in the stock. In order to take care of this contingency, it is advisable to use such words as "all kinds of lawful goods and merchandise consisting principally of dry goods."

The policy ordinarily states a limit of liability. In addition to being careful that the amount stated is that contemplated by both the policyholder and the company, it is important to have the wording show clearly whether this limit of liability includes salvage and other charges or whether such charges would be in addition to the limit of liability applying to the property loss.

Many inland marine policies contain warranties. As explained in Chapter I, warranties are looked upon with disfavor by many legislatures and many courts. Most, if not all, warranties can be rephrased as conditions of coverage that are just as strong as the warranty and at the same time acceptable under the insurance laws and rulings. For example, a typical warranty found occasionally in inland marine policies is: "Warranted free of loss or damage caused by or resulting from strikes, lockouts, or labor disturbances." This could be reworded to state: "It is understood and agreed that this policy does not cover loss or damage resulting from strikes, lockouts, or labor disturbances."

Contract Provisions Affecting Coverage

Coinsurance. Coinsurance is not universal in inland marine insurance, but it appears sufficiently often to require an examination of its application and use. The principle of coinsurance is that the policyholder must carry insurance in an amount equal to a

prescribed percentage of the value of the property covered if he is to collect his loss in full. If the policyholder fails to maintain insurance up to the required percentage of the total value, he is penalized in proportion to this deficiency in the settlement of any loss under the policy. For example, when insurance equal to the full value is required (100% coinsurance) and the policyholder carries insurance equal to only half the value of the property, he would collect only half of the amount of any loss. He is required to stand the rest of the loss himself and in that respect becomes a "coinsurer" with the insurance company; hence the word "coinsurance" is used.

Inland marine policies frequently do not title the coinsurance clause by that name, as fire insurance policies do. The wording of an inland marine clause frequently used is:

> In no event shall this company be liable for a greater proportion of any loss than the limit of liability under this policy bears to the total value of the property insured under this policy at the time such loss occurs.

It is obvious that the purpose of the coinsurance clause is to influence the policyholder to carry insurance equal to the value of the property or, in the case of a lower percentage clause, equal to the amount specified in the clause. This is necessary in order that all policyholders will pay an equitable share of the premiums needed to pay the claims resulting from that class of business.

Inland marine rates are based upon the assumption that policyholders will carry approximately full insurance to value. However, a policyholder may feel that he can gamble on the possibility that he will never suffer a total loss, and he may decide to carry insurance equal to only a part of the value he owns. His motive would be to save a portion of the premium he would have to pay for full insurance. If a large number of policyholders did this, the insurance company's premium income would be reduced proportionately. The losses to be paid by the insurance company would not be reduced in the same proportion as the reduction in premium, because most losses are partial. The rates for insurance would have to be larger if a large proportion of policyholders carried only partial insurance than if all policyholders carried full insurance to value. The coinsurance clause makes it advantageous for all policyholders to carry approximately the same proportion of insurance on their property; the rates will be based on that proportion and will be fair to all policyholders.

The coinsurance principle is used in connection with inland marine policies on commercial property. Commercial property has a sales value or a cost value that can be determined within close limits. However, coinsurance seldom is used with insurance on household furnishings, clothing, and personal belongings because of the difficulty of arriving at a fair value for such property.

The presence of coinsurance always complicates a loss settlement. It is necessary to determine not only the amount of the loss but also the cash value of all property covered under the policy, since the amount to be paid depends on the ratio of the insurance carried to the value of the property.

A difficult situation arises in connection with coinsurance clauses when the values insured are not under the control of the policyholder. This occurs with bailee coverages and other legal liability coverages, such as motor truck cargo insurance. Coinsurance clauses on these policies penalize the assured if the value in his custody at the time of a loss is greater than the limit of liability on the policy. This is a difficult problem for a policyholder when, as in the case of motor truck cargo insurance, he does not know the value of the property he is carrying. It is necessary for the policyholder to get some idea of the values from his customers and discuss this with the insurance company so that the limit of liability will be sufficiently high to take care of any loss that may occur.

Coinsurance is not necessary when the nature of the policy requires the assured to carry full insurance to value. Policies covering property in the course of transportation usually require that the assured report all shipments covered by the policy, and the premium is based upon the amount of property shipped. Reporting less than the actual value is a violation of the policy terms. The assured is penalized if there is a loss and it is found that the values reported are less than those actually shipped.

Many motor truck cargo policies are rated on the basis of the assured's gross receipts, so that the amount of premium varies in relation to the exposure as indicated in the gross receipts of the business.

When the amount of premium does not fluctuate in relation to the amount of exposure, about the only way to secure an adequate premium is to put in the policy a coinsurance clause whereby the assured participates in the loss if he has inadequate coverage.

Concealment, misrepresentation, and fraud. Inland marine insurance policies contain a clause concerning concealment, misrepresentation, and fraud by the assured. A clause frequently used reads as follows:

> This entire policy shall be void if the assured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof or in case of any fraud, attempted fraud or false swearing by the assured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

The insertion of the word "material" in connection with concealment and misrepresentation is a practical acknowledgment of the situation under the insurance laws of many states. The insurance laws of New York state provide that "no misrepresentation shall void any contract of insurance or defeat recovery thereunder unless such misrepresentation was material. No misrepresentation shall be deemed material unless knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make such a contract." [2]

The thinking of the courts regarding concealment and misrepresentation under an inland marine policy is different from that in connection with an ocean marine policy. It has been stated that the historical basis for the writing of inland and ocean marine insurance by the same company does not warrant or necessitate the same treatment for both types of policies. The marine rule calling for all facts material to the insurance may be seen to have a logical basis when it is considered that the insurer may not have an opportunity to inspect a vessel, particularly when it is in a foreign port. The same consideration does not exist in connection with an inland marine policy, because the inland marine underwriter has a better opportunity to inquire into the hazards that might result in a loss.

The "ordinary rule" applying to fire insurance coverage is that "concealment" is the intentional withholding of any fact material to the insurance which the assured in honesty and good faith ought to communicate to the underwriter. If there is no intent to conceal material facts, the assured may remain silent in respect to many matters concerning which the underwriter fails to question him. The "ordinary rule" has been upheld as that applying to inland marine insurance rather than the "marine rule," which requires full

[2] Section 149, paragraph 2.

disclosure of the facts whether or not the underwriter asks for the information.[3]

Misrepresentation differs from concealment in that there must be an incorrect statement made with intent to deceive the insurer. However, misrepresentation that would invalidate a policy must be material to the risk. It is seldom that an insurance company can avoid payment of a loss on the plea of misrepresentation unless the misrepresentation is such that, had the true facts been disclosed, the company would not have issued the policy. The New York law further provides that it is permissible to introduce in evidence in such cases the regular practice and procedure of the insurance company in the underwriting of its business in order to show the type of information that would have caused it to reject the risk.

When fraud is proved, the courts seem favorable to the insurance companies and have held that an attempt to defraud the insurance company will invalidate the policy.

Fraud is extremely difficult to prove and the proof must be conclusive. The mere making of a false statement is not proof of fraud. A false statement might be made unintentionally or without intent to defraud; in such a case there is a serious question whether it would be considered a fraud by the courts.

Actions that have been interpreted by the courts as constituting fraud or attempted fraud have included the making of a false statement of loss [4] and attempts to show that certain merchandise was on a location and destroyed in a fire, when as a matter of fact it was not present and was not destroyed.[5]

The distinction between misrepresentation and fraud sometimes is a rather fine line. In general, a fraud is a misrepresentation known to be false by the person making it and made with an intent to defraud the other party, in this case the insurance company.

Territorial limits. The territorial limits specified in inland marine transportation policies differ from the fixed locations specified in other property insurance policies. The coverage is not limited to a single location but applies at any location within the territorial limits described. Many of the personal inland marine

[3] Stecker v. American Home Fire Assurance Co., 299 N. Y. 1, 84 N. E. (2nd) 797 (1949).

[4] Columbian Ins. Co. v. Modern Laundry, Inc., 277 F. 355 (1921).

[5] Virginia Fire and Marine Ins. Co. v. Vaughan, 88 Va. 832, 14 S. E. 754 (1892).

policies, such as the personal property floater and personal jewelry and fur floaters, cover the property anywhere in the world.

Another common territorial designation is "within the continental United States and Canada." The question has arisen whether the term "continental United States" includes Alaska. In order to make the policy absolutely clear, many underwriters use such wording as "including Alaska" or "excluding Alaska." In the absence of any such statement, Alaska probably would be regarded as a part of the continental United States.

Alaska is a part of the United States by virtue of the treaty concluded with Russia in 1867, which provided that the inhabitants of Alaska should be admitted to the enjoyment of all the rights, advantages, and immunities of the citizens of the United States and should be maintained and protected in the free enjoyment of their liberty, property, and religion. The federal Constitution controls Congress in its legislation respecting Alaska. In an early case, Mr. Chief Justice Marshall, speaking for the United States Supreme Court, said that "United States is the name given to our great Republic, which is composed of states and territories. The District of Columbia, or the territory West of Missouri, is not less within the United States than Maryland or Pennsylvania."[6] The territory of Alaska is on the same continent as the United States and therefore would seem to be a part of the continental United States.

The use of the word "continental" would seem to limit the area so that, for example, the territory of Hawaii would not be covered by such wording. If a policy provided coverage "within the United States," the coverage would be broader and would undoubtedly cover such territories as Hawaii and Puerto Rico, which are a part of the United States but not part of the continental United States.

Some inland marine policies, such as motor truck cargo policies, may cover within a radius of a specified number of miles of a fixed location. The question has arisen as to whether the radius of operation is intended to mean a geometric radius or the distance by highway. Inasmuch as the geometric radius ordinarily would give a broader radius of operation and would be more favorable to the policyholder, it may be assumed that the simple words "radius of operation" or "within a radius of" so many miles would be interpreted to be a straight geometric radius and not the distance by

[6] Loughborough v. Blake, 5 Wheat. 317, 5 L. ed. 98 (1820).

highway. This seems reasonable because the distance by highway could vary from year to year as highways were changed.

Some companies have inserted in their motor truck cargo policies a further statement to the effect that the radius is to be measured by the shortest highway distance from the point of operation. The use of the radius by airline measurement is simpler and offers fewer complications to both the assured and the company.

Valuation of insured property. The valuation clause in the policy should be coördinated with any clause regarding valuation that may appear in the form. A commonly used clause in inland marine policies reads:

> Unless otherwise provided in form attached, this company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs and the loss or damage shall be ascertained or estimated according to such actual cash value with proper deduction for depreciation, however caused, and shall in no event exceed what it would then cost the assured to repair or replace the same with material of like kind and quality.

The presence of this clause without any modifying endorsement means that the policy is not valued and the assured will have to prove the value of the property destroyed before he can recover the amount of the loss. This means that he must prove two things; first, the fact that the property is lost or damaged and second, the amount of the loss.

Two types of valuation endorsements may be used to modify the valuation clause in the policy. The first of these is a statement that sets a dollars-and-cents value on a specifically described article. For example, the value of a painting described in a fine arts floater may be set at $500. If the painting is destroyed, the company is obligated to pay the amount of $500. This type of endorsement makes the policy a "valued policy."

The second type of modification of the valuation clause prescribes a method by which the value of the property is to be determined for loss adjustment purposes. For example, a clause used on motor truck cargo policies reads:

> The valuation of the goods insured hereunder shall be the actual invoice cost, including prepaid freight, together with such costs and charges since shipment as may have accrued and become legally due thereon. In the event of there being no invoice, the valuation of the merchandise insured shall be the cash market value of the article or articles insured, on date and at place of shipment.

A policy writer may inadvertently make a policy on a valued

basis. Many inland marine policies specifically list the articles insured. The heading at the top of a column listing an amount of money opposite each article may determine whether or not the policy is on a valued basis. If the word at the top is "value" or a similar designation, the amount set opposite each item becomes the agreed value of the item.

There might be some question concerning the value of the items if the words at the top of this column are "amount of insurance." It may be presumed that the amount of insurance is not necessarily the value of the articles, but many underwriters feel that the preferred wording is "limit of liability." In this case, there can be no question that there is no agreement concerning the value of the item.

There should be a clear understanding between the policyholder and the company about whether the policy is on a valued basis, and the terms of the policy should state clearly whether the amounts are limits of liability or are agreed as the value of the items to be paid in case of loss.

Limitation of recovery for partial loss. Three clauses frequently found in inland marine policies are designed to limit the recovery if the damage occurs to only a portion of the property insured.

The first of these is the *"pairs and sets" clause.* A frequently used version of this clause provides:

> In event of loss of or damage to any article or articles which are a part of a set, the measure of loss of or damage to such article or articles shall be a reasonable and fair proportion of the total value of the set, giving consideration to the importance of said article or articles; but in no event shall such loss or damage be construed to mean total loss of the set.

A similar clause with a slightly different application is the *machinery clause,* which reads:

> In case of loss or injury to any part of the insured property consisting, when complete for sale or use, of several parts, this company shall only be liable for the insured value of the part lost or damaged.

The adjustment of losses under these two clauses presents a difficult problem for the adjuster. He must arrive at a fair proportionate value of the part or parts lost or damaged in their relation to the entire machine or set. These provisions are necessary in order to make it clear that the assured is not entitled to receive payment for a total loss under the policy when a part of a set or of a machine is lost or damaged.

A third clause with a similar intent is the *labels clause,* which reads:

In case of loss or damage affecting labels, capsules or wrappers, the loss shall be adjusted on the basis of an amount sufficient to pay the cost of new labels, capsules or wrappers, and the cost of reconditioning the goods.

This clause is useful in the handling of claims involving canned goods in which the only damage may be soiling or destruction of the labels. It is simpler to adjust losses under this clause than under the "pairs and sets" or machinery clauses, inasmuch as the exact method of determining the loss is set out.

Assured's obligation to protect threatened property. One of the clauses found in almost all inland marine policies, and at the same time one of the most misunderstood clauses, is the "sue and labor" clause. It is borrowed directly from ocean marine policies and is couched in the language of American colonial days. It reads:

In case of loss or damage, it shall be lawful and necessary for the Assured, his or their factors, servants and assigns, to sue, labor, and travel for, in and about the defense, safeguard and recovery of the property insured hereunder or any part thereof without prejudice to this insurance; nor shall the acts of the Assured or this Company, in recovering, saving and preserving the property insured in case of loss or damage, be considered a waiver or an acceptance of abandonment, to the charge whereof this Company will contribute according to the rate and quantity of the sum herein insured.

The clause is intended to do several things. Its primary objective is to obligate the assured to save the property from further loss, in case some loss or damage occurs. In addition to placing this obligation on the assured, it also permits him to take action or spend money toward the saving of the property without waiving any of his rights to offer abandonment of the property to the insurance company. The clause also permits the company to recover, save, or preserve the property without its action being considered as a waiver or as an acceptance of abandonment tendered by the assured. The final agreement is that the company will pay its proportion of such expense in relation to the amount of insurance and the value of the property.

The clause originated at a time when cargoes might be at locations remote from the representatives of the insurance company and when representatives of the assured frequently traveled with their cargoes to remote parts of the world. In case of loss, this representative of the assured was obliged to do everything he could to preserve the property from further damage.

It also has been held that "sue and labor" expenses may be paid to prevent a loss even though the property was not actually damaged.

The assured has no claim under the "sue and labor" clause if the peril threatening the property is not insured against by the policy. For example, if the policy did not cover against loss by fire, the assured could not collect from the insurance company any expenses incurred to prevent a fire loss.

"Sue and labor" expenses also may be collected when the efforts were not successful in preventing a total loss. There are ocean marine cases in which "sue and labor" expenses have been allowed to an assured in addition to payment for a total loss. It appears that this interpretation would be carried over into inland marine cases, inasmuch as this would be favorable to the assured. The wording is sufficiently obscure so that the courts are likely to give any benefit of doubt to the assured.

Many underwriters have felt that the archaic language of the "sue and labor" clause should be discarded for modern language that would express its intent in terms the policyholder would be able to understand without reference to ocean marine court decisions. There is some improvement in the wording of the "protection of merchandise" clause in the floor plan policy promulgated by the Inland Marine Insurance Bureau, but there still is no clear statement about whether it is intended to pay "sue and labor" expenses in addition to a total loss. This clause reads:

> In the event of loss or damage, it shall be necessary for the assured to use all lawful and proper efforts for the safeguard and recovery of the merchandise or its value, without prejudice to this insurance, and this company will contribute to the just and reasonable charges thereof in such proportion as the sum insured hereunder bears to the whole value of the merchandise involved in the disaster at the time such loss or damage shall occur. And it is mutually agreed that the acts of either party or their agents in saving, preserving or recovering the merchandise shall not be considered or held to be either a waiver or an acceptance of abandonment.

It is necessary to draw a distinction between "sue and labor" expenses and general average expenses. Expenses for which the company is liable under the "sue and labor" clause are those that help directly to reduce the loss to the insurance company on the specific property insured. Court costs are allowable, as are the costs of reconditioning merchandise, unloading it, and forwarding it by other means.

General average expenses, on the other hand, relate to the prorating of a loss over an entire cargo and ship and freight. Sometimes there may be a close question whether the costs are "sue and labor" expenses or expenses to prevent loss of an entire venture. Inasmuch as general average expenses are not common in inland marine insurance, this question has not caused much difficulty up to the present time, although it may arise in connection with shipments of air freight.

Subrogation. The right of subrogation is important to insurance companies. It is recognized by common law that a person who is responsible for a loss ultimately should make good the amount of the loss. The insurance contract is one of indemnity; when the insurance company pays a loss, it acquires any right of recovery which the assured may have against a third person responsible for the loss. This right does not rest upon the insurance contract itself but is a matter of equity in that the insurance company is the one ultimately wronged by the person causing the loss.

Inasmuch as the insurance company is acquiring from the assured a right of collection, the amount the company can collect is limited to the amount the assured could have collected if there were no insurance. The assured must not do anything that would impair this right of recovery; otherwise he may impair his right to indemnity from the insurance company.

Although the insurance company has a right of subrogation under common law and equity, companies usually insert in their inland marine policies a clause outlining the exact obligations and procedure in connection with subrogation rights. One of the simpler clauses relating to this right reads:

> In the event of any payment under this policy the company shall be subrogated to all the assured's rights of recovery therefor against any person or organization and the assured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The assured shall do nothing after loss to prejudice such rights.

It will be seen that this requires the assignment of right of recovery to the company. It does not clearly obligate the assured to proceed against the wrongdoer. Occasionally a company may insert a further requirement that the assured will, at the request and expense of the company, proceed against the wrongdoer by means of court action or whatever reasonable means the company may require. This latter course is followed when the insurance

company feels it would be to its disadvantage to proceed in its own name against the wrongdoer. The company may feel that a jury or court would be more likely to allow recovery if a suit is brought in the name of the assured rather than in the name of the insurance company.

Carrier or bailee not to benefit from insurance. Closely tied to the right of subrogation is a clause in the inland marine policy providing that the insurance shall "in no wise inure directly or indirectly to the benefit of any carrier or other bailee." Carriers and bailees frequently insert in their contracts or bills of lading a provision that any insurance carried by the assured will be for the benefit of the carrier or bailee. If it were not for the policy provision quoted in this paragraph, payment by the company to the assured would relieve the carrier or bailee from its obligation to make good the amount of a loss for which he may be liable.

Inland marine policies sometimes include a further provision regarding the liability of a carrier or bailee to the effect that, if the assured has agreed to release or lessen the liability of any carrier or bailee, the policy will be void. The use of such a clause on the policy would make the policy voidable by the acceptance of an ordinary bill of lading, such as is used by railroads. A further discussion of this subject will be found in the chapters covering transportation policies; mention of it is made here in order to associate it with the provision in the policy that the insurance shall not inure to the benefit of a carrier or bailee. Insurance companies use every means to protect their rights of subrogation, inasmuch as rates and coverages are based upon the right to recover portions of the losses they pay. Any release of these rights of subrogation would require higher rates for the coverage.

Other insurance. Almost all inland marine policies contain some reference to other insurance. A common one used on inland marine policies reads that the insurance "shall not cover to the extent of any other insurance whether prior or subsequent hereto in date, and by whomsoever effected, directly or indirectly, covering the same property and this company shall be liable for loss or damage only for the excess value beyond the amount of such other insurance."

A discussion of the problems in connection with "other insurance" clauses appears in Chapter XXI concerning adjustment of losses.

Questions

1. What elements are necessary in a contract to make it binding?
2. In what important respect does an insurance policy differ from other contracts?
3. What is insurable interest?
4. How does coinsurance affect the rates charged for insurance coverage?
5. Why is a coinsurance clause seldom attached to a policy covering personal effects or household goods?
6. Explain the difference between the ordinary rule and the marine rule as it affects misrepresentation and fraud in connection with an inland marine policy.
7. How do the territorial limits specified in an inland marine policy differ from those given in a policy covering at a fixed location?
8. What is a valued policy?
9. What is the purpose of the "pairs and sets" clause?
10. What obligation is placed upon the assured by the "sue and labor" clause?
11. What is the right of subrogation?

CHAPTER V

"All Risks" Insurance

The Development of "All Risks" Insurance

Need for broad insurance coverage. The insuring of property on land for "all risks" of loss or damage is a development of the present generation. Previously "all risks" coverage was available only to property being transported by sea, and there was no real need for broad coverage on property at fixed locations on land. Land transportation was not sufficiently general to justify broad insurance coverage. The property of our grandfathers occasionally burned or was blown away, but people did not believe their property was subject to many other hazards. Travelers carried a small amount of luggage of which the dollar value was not sufficient to justify insurance.

Insurance protection always has been developed to meet specific needs of the public. Fire insurance was an early form of protection because the threat of fire was recognized generally. The great fire of London in 1666 gave an early impetus to plans for insuring not only against conflagration losses but also against individual losses from smaller fires. In this country the New York City conflagration of 1835 made many people realize the need for insurance protection.

Later in the nineteenth century the people of the United States saw tornadoes on the western plains and coastal winds along the Atlantic Ocean wipe out their belongings. There grew up a demand for protection against destruction by the wind.

In this century there has been a greatly increased amount of travel, and people are carrying with them things of much greater value than used to be customary.

Property in the home is now subject to a great variety of hazards. In addition to the risks of fire and windstorm, the installation of modern plumbing threatens extensive destruction from leakage when the owner happens to be away for a few hours or a few days. Modern heating equipment occasionally goes wrong and smokes up

an entire house. Airplanes and motor vehicles offer other threats to property. Higher standards of living have brought additional mechanical devices and have added new threats to the property man accumulates.

The rapid increase in the use of airplanes and the shipping of cargo by air not only has added a new method of transportation but also has caused a revolution in train travel. From 1905, when the Pennsylvania Railroad's Broadway Limited established a record speed for trains of 127 miles an hour, until the early 1930's, there had been no outstanding changes in the equipment or running time of the railroads. Early in the 1930's the transcontinental airlines began to carry an increasingly large number of passengers. The railroads foresaw the loss of an important volume of travel and began to look for methods of speeding up train schedules. The advent of the Diesel locomotive and the building of lightweight trains permitted the cutting of a day or more from transcontinental travel time.

During World War II another change had an important effect on the safety of baggage in the hands of travelers. It was customary in the days prior to this for porters to carry a traveler's baggage to the train and then return to the waiting room to get another customer and carry his baggage to the train. At no time was the baggage out of the traveler's sight. The shortage of porters during the war forced the adoption of a system under which baggage is checked by the porter and carried in a considerable volume on a hand truck between the waiting room and the trainside. The passenger is not able to watch his bags to see that they get on the right train and in the right car. At times the piles of luggage are left unattended temporarily and bags may be pilfered by a passer-by. Losses of traveling bags are much more likely to occur under the new system, and the amount for which the railroad is liable for a lost bag seldom equals the value.

A specified perils policy cannot cover all the possible chances of loss, no matter how extensive the list of perils may be. An example of a loss due to modern transportation was the breakage of a bottle of perfume in a woman's luggage at high altitude. The cabin of the plane in which she was traveling was pressurized, but the baggage compartment was not. At an altitude of 16,000 feet the perfume bottle burst and soaked with perfume all the clothes in a

suitcase. The cost of cleaning the garments was paid as a loss under an "all risks" policy.

The "all risks" policy has been developed out of the realization that the assured needs indemnification for any loss large enough to hurt him financially, regardless of the cause. It is just as much a misfortune for the policyholder to have a $2,000 loss from leakage of plumbing as it is for him to have a $2,000 fire loss. This principle was recognized at an early date in the handling of cargo and ships at sea, but it is relatively new in its application to property on land.

"All risks" not synonymous with "inland marine." The fact that marine and inland marine underwriters developed "all risks" coverage for property on land has resulted in a misunderstanding concerning the nature of inland marine protection. A great many people, including many in the insurance business, believe that the words "inland marine" and "all risks" are synonymous. This is not the case. Many inland marine policies cover specified perils; in such cases the coverage is the same as would be given under other specified perils policies naming the same hazards.

As pointed out in previous chapters, the words "inland marine" refer to the insurance of property that is in transit or related to transportation. "All risks" is only one type of coverage that happens to be common under inland marine policies. There has been a great deal of discussion during the past few years regarding the possibility of "all risks" coverage for property at fixed locations, particularly for residence structures. This would be an "all risks" but not an inland marine coverage because such property is not movable and has no relation to transportation.

Nature of "All Risks" Protection

A further misunderstanding regarding the nature of "all risks" protection is the belief that an "all risks" policy covers against any loss or damage that can happen to the property. The "all risks" policy is not an "all loss" coverage, because a "risk" is merely a chance of loss.[1] Things that occur or may be expected to occur in the normal course of events are not the result of risks and are

[1] One court stated: ". . . I have followed the English authorities, because I think them right in holding that, even in an 'all risk' policy, there must be a fortuitous event—a casualty—to give rise to any liability for insurance." Mellon v. Federal Ins. Co. 14 F. (2d) 997 (1926).

not covered by an "all risks" policy. For example, a pair of shoes will wear out in the normal course of their use by the owner. There is no chance involved, for this is an expected result of wear and tear. The loss is not from a risk and is not covered by an "all risks" policy.

A loss resulting from a deliberate act of the assured is not the result of a risk, even though the consequences are unexpected. Claims have been received under the "all risks" personal property floater for damage done to dresses by deodorants. This damage is not the result of a risk because it came from a deliberate act of the assured in applying the deodorant. Had the deodorant been spilled onto the dress, the loss would be covered by an "all risks" policy. The shrinking of wool in hot water is not a loss due to a risk, because wool shrinks naturally when placed in hot water and the damage is the result of a deliberate act.

The distinction may be brought out more clearly by pointing out the difference between "all risks" protection in such policies as the personal property floater and the insuring clause of the jewelers' block policy, which covers "loss of and/or damage to the above described property or part thereof from any cause whatsoever." The wearing out of property is a loss that results from a cause but not from a risk.[2] This phraseology can be used in a jewelers' block policy because wear and tear is not a factor to be considered in the insuring of jewelry stocks. If it were used in a policy covering property in use, it would be desirable to put in a provision excluding loss due to wear and tear.

Another type of loss not covered by an "all risks" policy, because it is an expected occurrence and does not result from chance, is deterioration from natural causes. The spoilage of food is not the result of a risk. An exception to this rule would be food under refrigeration that spoiled when some accident caused the refrigeration to break down.

The "all risks" form of coverage is the broadest insurance protection generally available. It indemnifies for a great many miscellaneous losses not covered by any other type of policy. In addition to the losses covered by the many different specified perils policies, "all risks" protection insures against unexpected losses

[2] However, in an ocean marine case the court said: "The words 'other causes of whatsoever nature' cover, in my opinion, 'all risks'; but the perils insured against are risks." Mellon v. Federal Ins. Co., 14 F. (2d) 997 (1926).

from causes too numerous to list in an insurance policy. For example, the loss of property without any other cause except that the property was misplaced or is unaccountably missing is covered under the "all risks" policy. Mysterious disappearance causes a large portion of the claims under the "all risks" type of coverage and is a difficult problem in underwriting. Truly mysterious disappearance is insurable, because the loss may result from theft or another peril under circumstances that make it impossible to determine the cause accurately. In order to maintain a satisfactory loss ratio, the companies must underwrite their policies in such a way that they do not insure a person who is habitually careless and loses things constantly.

The odd losses paid under "all risks" policies involve several cases in which squirrels have been trapped in houses and have done considerable damage during the absence of the owners. Ink or paint accidentally spilled on carpets or furniture also has resulted in many insured losses, and water damage from burst pipes or a leaky roof is covered.

The "all risks" policy is almost the only one that gives protection against loss by flood. Flood insurance cannot well be sold as a separate coverage because it would be purchased only by those people who have property in areas that are flooded frequently by rising streams or lakes. Flood protection can be included in a broad form of policy because it is written on widely scattered properties. The hazard is spread, because people on high ground as well as on the lowlands purchase the policy for the broad protection it gives.

Fire as a risk. In connection with losses by fire, there is an important distinction between an "all risks" policy and the coverage under a fire policy. The ordinary fire insurance policy does not define the word "fire," but by general custom of the business, supported by a long line of court decisions, the word has come to mean a "hostile" fire. A "hostile" fire is one that has gone beyond the place where it is intended to be. A fire in a stove or furnace or fireplace is considered a "friendly" fire just as long as the flames do not extend beyond the bounds of the place where the fire is intended to be. Any damage done by a fire that remains within its proper bounds is considered the result of a "friendly" fire and is not intended to be covered by the fire insurance policy.

There have been cases in which property has been thrown into a stove unintentionally, but courts have held that the loss is not

covered by the fire insurance policy. Neither is the fire policy intended to cover damage resulting from smoke if the fire itself is confined to the furnace and the smoke is the result of faulty operation of the furnace. If damage by smoke from a furnace is to be covered under a specified perils policy, a special endorsement must be added to the policy giving smoke damage coverage.

The "all risks" policy does not specifically mention loss by fire, but it covers against "all risks" of loss or damage. A loss resulting from the accidental throwing of property into a fire is the result of a risk and as such is covered.

Exclusions under an "all risks" policy. The discussion of "all risks" insurance up to this point has been based upon an interpretation of the coverage provided by the words "all risks of loss or damage." The actual limitation of coverage under an "all risks" policy is determined by the exclusions. The exclusions are intended (1) to clarify the basic coverage, (2) to eliminate risks that cannot be insured at reasonable rates, and (3) to exclude coverage that might encourage the policyholder to be careless.

Five general types of exclusions appear in "all risks" policies.

The first is an exclusion relating to property subject to an *excessive hazard*. An example of this type of exclusion is one relating to property on exhibition, such as that in museums. Experience has shown that property on exhibition frequently is damaged as a result of vandalism or accidental mishandling by the public. Coverage that protects easily damaged articles while on exhibition requires an extremely high rate, and the average policyholder does not need the protection. For that reason such property is excluded from coverage except when there is a specific need for it and an additional charge is made.

A second type of exclusion similar to the first relates to *unusual or catastrophic losses*. War damage is not covered under most policies because it is held that modern war causes such widespread destruction that it is not an insurable hazard. Present thought is that war damage can be compensated for only by a governmental arrangement such as the War Damage Corporation put into effect during World War II.

A third general type of exclusion relates to *property normally covered by other insurance*. It has become customary for automobiles, motorcycles, aircraft, boats, and other vehicles or conveyances to be insured under policies especially designed to give

them the protection they need. This type of property must be excluded under an inland marine "all risks" policy both to prevent double coverage and to avoid covering a type of property that must be rated on a different basis from that contemplated in an inland marine "all risks" policy.

A fourth type of exclusion relates to *losses that are partially or wholly under the control of the assured.* These are the losses to fragile articles and losses resulting from marring or scratching property. A careful policyholder takes extreme precaution to see that easily damaged articles are protected from loss. The insuring of losses caused by carelessness would result in an excessive number of claims and would necessitate higher rates.

Similar to this group of exclusions is the provision excluding damage to property while being worked upon in the course of a refinishing, renovating, or repair process. This exclusion in the policy is intended to influence the assured to select a careful cleaner or repair man and also places the responsibility for such damage on the person doing the processing. The contention is that the processor should be responsible for any damage done in connection with his work on the property.

The fifth type of exclusion, and one that covers an extremely wide range of losses, is that relating to damage of a *wear and tear* nature. There are cases in which the dividing line between an actual risk and wear and tear is so fine that a specific exclusion helps to mark the limitation between an insured loss and one that is a matter of wear and tear. These exclusions usually mention wear and tear and also such losses as those growing out of mechanical and electrical breakdown. It is considered that any machine will wear out in the course of time, and the burning out of an electric motor or the eventual breakdown of mechanical apparatus should not be considered an insurable loss because it is a result to be expected after the machine has seen normal use for a considerable period. It is worthy of note that lightning damage to electrical apparatus may be covered because this is properly insurable as the result of a risk and is not the result of wear and tear.

Loss or damage resulting from inherent vice usually is excluded. This may not be necessary, inasmuch as inherent vice is not a risk but is a quality normal to the property. It is customary to exclude inherent vice specifically in order that the intent of the policy may be entirely clear. The term "inherent vice" has come down to us

from ocean marine insurance and the meaning is not entirely clear from the words themselves. "Inherent vice" may be defined as a quality within an object that results in the object's tending to destroy itself. A frequently used example is the fact that rubber automobile tires deteriorate whether or not they are in use and eventually become worthless even though they have never been put on an automobile. This results from an inherent quality of the rubber that tends to cause deterioration and eventual destruction of the tires.

In a case decided in the Texas courts, some cattle had been frightened by a locomotive whistle and were injured in a stampede. The owner of the cattle sued the railroad but was denied damages. It was the decision of the court that cattle have a natural tendency to become frightened and stampede, and that the damage resulted from something inherent in the nature of cattle that might be expected to manifest itself in the vicinity of the railroad.[3]

"All risks" policies contain other exclusions designed to handle problems peculiar to the type of property being insured.

Personal policies frequently exclude business property, in order to avoid payment for losses on property that is subject to hazards greater than those contemplated in the rates charged for personal policies. This and other specific exclusions will be discussed in the sections concerning the individual policies.

Reasons for deductible clauses in "all risks" policies. In spite of the fact that carefully worded exclusions are included in "all risks" policies, there remains a wide section of coverage in which it is difficult to determine whether the loss is from ordinary wear and tear or from an insurable risk. For example, a small slit in the skin of a fur coat probably would be considered normal wear and tear resulting from deterioration of the skin. If the tear extended for several inches and was caused by the coat's being caught on a nail, the cost of repairs might be sufficiently high to be considered an insurable risk under the "all risks" type of policy. It is difficult to determine just where to draw the line in connection with such damages as rips and tears, cigarette burns, and the spotting of

[3] On appeal, the lower court's charge to the jury was upheld. In it "inherent vice" was defined as follows: "'Inherent vice' in an animal is some quality or characteristic of the animal that brings about its own injury or destruction without fault on the part of any other supervening cause." Texas & P. Rwy. Co. v. Prunty, 233 S. W. 625 (Tex. Civ. App. 1921).

clothing. The dry cleaning of wearing apparel and laundering of other household property is considered a normal expense of living, but an unusual amount of smoke from the faulty operation of heating or cooking equipment can produce an expensive loss and one that is properly insurable. The upsetting of a bottle of ink on a rug or suit is clearly a risk, and the cleaning bill would be a proper charge to be paid by the insurance company. There could easily be a controversy over the cleaning of wearing apparel or draperies on the question of whether damage resulted from wear and tear or was the result of a risk contemplated by the policy.

The basic function of insurance is to indemnify the assured for an unexpected loss that is beyond his normal running expenses. The specified perils type of policy covers losses from fire, windstorm, lightning, and a list of other hazards that ordinarily occur in such proportions that the results are catastrophic to the individual. Under this type of policy there is little likelihood of numerous claims of the sort that might be regarded as resulting from normal wear and tear.

Under the broad coverage of the "all risks" policies, the underwriters have found it desirable to use deductible clauses in order to mark the dividing line between ordinary wear and tear losses and an insurable loss. For example, a twenty-five-dollar deductible clause effectively eliminates claims for small rips in suits and ordinary cleaning bills, or the loss of hats and fountain pens that the assured would expect to replace at his own expense if there were no insurance on the property. The deductible clause eliminates payments for the numerous small losses that are relatively costly to adjust and that tend to make the rate for "all risks" coverage much higher than is necessary for a broad insurance coverage on catastrophic losses.

Full coverage "all risks" insurance is likely to encourage carelessness, because the assured may feel that any loss will be covered by insurance. The use of the deductible clause lessens the hazard of carelessness and helps the company select careful policyholders. A policyholder who is willing to accept a deductible clause in his policy is more likely to be the careful type of individual. The use of the deductible is regarded as the most effective method of handling the problem of numerous small claims under the "all risks" type of coverage.

Questions

1. How have improvements in travel methods caused a need for broad insurance protection?
2. Do all inland marine policies provide "all risks" coverage?
3. How does an "all risks" coverage differ from an "all loss" coverage?
4. Is mysterious disappearance an insurable risk?
5. Why can flood coverage be written successfully as part of an "all risks" coverage but not separately?
6. Distinguish between a "friendly" and a "hostile" fire, and explain why an "all risks" coverage may insure against certain losses from a "friendly" fire whereas a fire insurance policy does not.
7. Why are exclusions put in "all risks" insurance policies?
8. What types of exclusions usually appear in an "all risks" insurance policy?
9. What is "inherent vice"?
10. Why are deductible clauses used frequently in "all risks" policies?

PART III
Transportation Policies

CHAPTER VI

Common Carrier Liability

Legal Definitions of Common Carrier Liability

It is the general rule that a common carrier is responsible for the safe delivery of goods that he has undertaken to transport from one place to another. This liability of the common carrier always has been subject to some exceptions. It is also true that there are some hazards which the common carrier must bear and from which it cannot relieve itself in any way.

Shippers by railroad in the United States did not feel any great need for insurance on goods in the custody of the railroads until World War I. The railroads had accepted their obligation as common carriers and often went beyond their legal liability in making restitution for lost and damaged property.

It became difficult, however, for shippers and consignees to recover damage claims during World War I when the railroads were being operated by the government. It was during this same decade that the Supreme Court of the United States decided that common carriers can limit their liability under certain conditions.[1] It was also between 1910 and 1920 that shipping contracts and bills of lading were being made more nearly uniform, partly as a result of new laws and partly through efforts of these common carriers toward standardization. This classification of the obligations imposed on common carriers made it evident that there were many circumstances under which a common carrier would not be held liable for the full amount of damages occurring to property in its custody. The railroads began to take advantage of these new limitations on their liability, and shippers and consignees found themselves unable to collect damages that might have been paid in full in previous years.

It has been a principle of the common law [2] for several hundreds

[1] Adams Express Company v. Croninger, 226 U. S. 491, 57 L. ed. 314 (1913).

[2] The common law of England was developed over a long period of time. Its principles were built up in decisions that drew their inspirations from a variety of

of years that a person who makes a business of carrying property for a consideration is responsible for the safe delivery of the property. If a common carrier could relieve himself of liability for safe delivery, he might be encouraged to connive with thieves or others for the loss of the property and to make a dishonest profit. Therefore the common carrier is held responsible for any loss that might in any way be preventable by the exercise of caution or diligence on his part.

It came to be recognized that certain calamities are beyond the control of a common carrier, and it is held not responsible for loss resulting directly from:

1. Acts of God.
2. Acts of the public enemy.
3. Exercise of public authority.
4. Fault or neglect on the part of the shipper.
5. Inherent vice or the nature of the property.

An *act of God* is an occurrence of a nature that can not be foreseen or prevented. Examples are storms, lightning, and earthquakes.

The *public enemy* refers to a nation or government at war with the nation in which the carrier is domiciled. (It must not be confused with the designation "Public Enemy Number 1," which occasionally is attached to individual criminals. A common carrier is responsible for losses due to the depredations of criminals.)

A typical *act of public authority* would be action taken to stop the spread of a conflagration or the building of a dike to halt rising flood waters.

Losses due to the negligence of the shipper or to an inherent quality of the property are obviously not under the control of a common carrier and it should not be held responsible for them.

There are circumstances in which a common carrier may be held liable for loss even though the cause is one of the five enumerated above. It may be that the loss could have been anticipated and that the carrier did not take proper precautions. An example might

sources. There never was any pressure in England for codification and enactment of statutes embodying the legal principles. The English common law became the basic law of the United States. With few exceptions it may be said that throughout the United States the common law applies in all circumstances in which no statute has been enacted to cover the point involved.

be a case in which a carrier could have moved cars from the path of rising flood waters but neglected to do so.

It will be seen that relatively few circumstances relieve a common carrier of liability. It was natural that such carriers would want to limit their extreme liability. Contracts for shipments or bills of lading[3] were drawn that limited the liability to specified amounts of money or that listed perils for which the carrier held itself not responsible. These contracts generally were binding when accepted by the shipper. There was a great deal of confusion because of the many different types of contracts used, and shippers claimed that they were abused in the application of them. Frequently the shipper had no choice but to accept the contract if he wanted to have his goods transported.

The need for some regulation resulted in the passage of the Interstate Commerce Act by Congress in 1887.[4] This act set up the Interstate Commerce Commission and gave it authority to regulate common carriers by railroad operating in interstate commerce.

The Interstate Commerce Act applies to common carriers operating between two or more states, and a 1915 amendment makes it apply also to shipments between any state and one of the adjoining countries.[5] A "common carrier" is one that holds itself out to the public as being able and willing to transport passengers or cargo between certain points. The Interstate Commerce Act makes it obligatory for a common carrier to serve any one who makes a request for the services, as long as the carrier has the facilities and is able to perform the service.

An important deficiency in the Interstate Commerce Act as originally passed was that a common carrier receiving goods for shipment was not required to be responsible beyond its own lines. The contract for shipment (bill of lading) could provide that the carrier was discharged from obligation when it had passed the goods safely into the hands of another carrier.

Cross-country shipments might pass through the hands of a

[3] A "bill of lading" is a written document given by the carrier to the shipper. It acknowledges receipt of the goods by the carrier and sets forth the terms of the contract for carrying the property. When it specifies a maximum amount for which the carrier will be liable in case of loss or damage, it is called a "released bill of lading."

[4] Act of Feb. 4, 1887—C. 104; 24 Stat. 379; U. S. C. A. Title 49, Secs. 1–22, 25–27.

[5] First Cummins Amendment, Act of March 4, 1915—C. 176; 38 Stat. 1196; U. S. C. A. Title 49. Sec. 20 (11).

dozen common carriers before reaching their destinations. In order to collect for a lost or damaged shipment, the shipper would have to ascertain which carrier was responsible for the loss. Frequently this was difficult or impossible for the shipper to prove. Even if he could determine the location and cause of the loss, he might find it necessary to press a suit against a carrier many hundreds of miles away. If the loss were small or proof doubtful, the expense of the suit might not be justified and the shipper might not be able to recover.

In 1906 Congress passed the Carmack Amendment to the Interstate Commerce Act,[6] which requires the originating common carrier to issue a receipt or bill of lading for a shipment and makes the initial carrier responsible to the holder of the receipt for damages occurring while the goods are in its custody or the custody of any succeeding carrier. The shipper makes his claim on the original carrier and does not have to deal with any succeeding carrier. (The original carrier can attempt to recover from a succeeding carrier if the loss did not occur on the lines of the originating carrier.) The shipper merely has to prove damage in transit; the only way in which the original carrier can avoid payment is to prove that the loss was occasioned by one of the few causes for which common carriers are not liable.

Before passage of the Carmack Amendment, there had been no clear definition of the liability of a common carrier in connection with interstate shipments. Some states had statutes on the subject, and the common law controlled where there was no superseding statute. Decisions in the courts followed the local rule, with the result that no shipper could know for a certainty what his rights might be for recovery of damages. The right to recovery in one state might not be parallel to the right to recover in another. With the passage of the Carmack Amendment the liability for loss was set out in the receipt and was placed on the originating carrier; all succeeding carriers were subject to the same liability; and the shipper usually could determine from his bill of lading what his rights of recovery might be. This amendment superseded any local rules or statutes that might be in effect at the place where a loss occurred.

Although the Carmack Amendment to the Interstate Commerce Act made a common carrier "liable to the lawful holder thereof

[6] Act of June 29, 1906—C. 3591; 34 Stat. 584; U. S. C. A. Title 49, Sec. 20 (11).

[bill of lading] for any loss, damage, or injury to such property caused by it," there was no prohibition against a common carrier's inserting a provision in a bill of lading limiting the amount to be paid in the event of loss.

Limiting clauses in bills of lading became increasingly frequent. Up to the beginning of World War I, many common carriers tended to ignore the limiting provisions and settled claims on the basis of the full value. In 1913 the Supreme Court of the United States decided that the provisions of such limiting clauses were binding upon both shippers and carriers.[7] This gave common carriers authority to enforce the provisions of these limiting clauses.

The terms of the First Cummins Amendment to the Interstate Commerce Act seem to have resulted from a reaction to the limitations placed in bills of lading by common carriers. Passed by Congress in 1915, it made common carriers liable for the full loss or damage regardless of the terms of any receipt or bill of lading. The only exception was in the case of packaged goods of which the carrier had not been notified of the character. On this type of shipment the carrier could limit its liability by requiring a written statement from the shipper setting forth the value of the goods.

The First Cummins Amendment was of tremendous importance to carriers and shippers because it set out the principle that

> any such common carrier, railroad, or transportation company so receiving property for transportation . . . shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to the value in any such receipt or bill of lading, or in any contract, rule, regulation or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void. . . .

This principle of recovery for loss caused by a common carrier is still in effect and is the basis for the subrogation rights insurance

[7] Adams Express Co. v. Croninger, 226 U. S. 491, 57 L. ed. 314 (1913). In a case decided before the passage of the Interstate Commerce Act, Hart v. Pennsylvania R. R. Co., 112 U. S. 331, 28 L. ed. 717 (1884), the Supreme Court had held that a valuation and limitation of liability in a bill of lading were just and reasonable and binding on the shipper, but the Adams Express Co. v. Croninger case is frequently cited as the basic case after passage of the Interstate Commerce Act.

companies enjoy in connection with policies issued to cover goods in transit.

It did appear, however, that the terms of this First Cummins Amendment might be too rigid in their prohibition of any agreements limiting value. The Second Cummins Amendment,[8] passed in 1916, gave the Interstate Commerce Commission power to authorize or order the establishing of "rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released. . . ." An exception was made of ordinary livestock, which must be shipped subject to full recovery. "Ordinary livestock" is defined to "include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses."

The passage of the Carmack and Cummins Amendments and the issuing of rulings of the Interstate Commerce Commission served to evolve a standard or "Uniform" set of bills of lading. It is not necessary to review here the various hearings and disputes that occurred, but it may be noted that the present bills of lading of rail carriers are based upon the provisions of the Bills of Lading Act[9] passed by Congress in 1916, and the wording has not been changed substantially since 1922.

Bills of Lading

Functions of a bill of lading. It is important for the inland marine underwriter to know the functions of the bill of lading and what it requires on the part of the shipper or consignee in order to collect for damaged goods. Unless its provisions are carried out, the insurance company may be unable to collect a loss under its subrogation rights.

The underwriter also should know what are the chances of recovery and what part of a loss a common carrier is obligated to pay under released bills of lading. The desirability of insuring a prospect and the insurance rate are dependent upon the shipper's methods of handling shipments and upon the extent of liability of

[8] Act of Aug. 9, 1916—C. 301; 39 Stat. 441; U. S. C. A. Title 49, Sec. 20 (11).
[9] Act of Aug. 29, 1916—C. 415; 39 Stat. 538; U. S. C. A., Title 49, Secs. 81–124.

the carriers. It is not always possible or economical for the policyholder to contract for full recovery from the carrier on all types of merchandise. The transportation charges on goods shipped under a released bill of lading may be much lower than the rates charged for full valuation. Owing to this fact, a shipper may find it economically desirable to accept a released bill of lading.

On its face, the bill of lading shows where the property was received and from whom, and the date of receipt. It includes a description of the goods showing the number of packages, the weight, any special marks, and other description that would serve to identify them. There is also on the same page a statement to this effect: "The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding . . . . . . per . . . . . ." On a released bill of lading this space is filled in with an amount, usually per 100 pounds, depending upon the tariff filed by the carrier for the particular commodity being shipped.

The contract portion of the bill of lading provides for filling in the name of the consignee, the destination, and the route over which the shipment is to travel; specifies who is to pay the freight charges (the consignor or the consignee); and indicates the rate for freight charges. On the back of the bill of lading are ten sections of conditions reading much like an insurance policy, in very fine print. The use of fine print is not so subject to criticism as might appear, because the terms of all railroad bills of lading are identical and they have not been changed for many years. The terms are available in larger print for easy reading if the shipper or consignee has need to study them. (See Appendix B.)

Straight bill of lading. In the *straight* bill of lading, the carrier is instructed to deliver the goods to the consignee, who is presumed to have title or at least the right to possession of the property. Goods are shipped under a straight bill of lading when the shipper wants the carrier to make delivery directly to the consignee named in the bill of lading. If a straight bill of lading should fall into the hands of someone other than the consignor or the consignee, it would not give him any right to the goods; the goods would be delivered to the consignee named in the bill of lading. The straight bill of lading is a contract between shipper and carrier for the shipment of the goods. The fact that it is nonnegotiable means that it cannot be endorsed to convey to a third party the right to receive the goods.

Order bill of lading. The *order* bill of lading also is a contract for shipment of goods, but it serves an additional function. The use of the order bill of lading can best be explained by examining first the needs of commerce that give rise to its use. A manufacturer, for example, may wish to ship a large quantity of goods to a dealer but not to extend credit for the shipment. The dealer may not want to pay for the goods in advance of receipt; perhaps he does not know the exact amount of the invoice, or he may not know just when the manufacturer can ship the goods, or perhaps he is working on a close margin of cash and will need to borrow money from his bank in order to pay for the goods. The bank probably would not lend the money until the goods were actually in the hands of the dealer. The situation requires some sort of cash-on-delivery arrangement whereby the manufacturer can ship the goods and be assured of payment upon their delivery to the dealer.

The cash-on-delivery arrangement is made with the help of an order bill of lading. The principal difference between the order bill of lading and the straight bill of lading is that the consignee named in the order bill of lading may endorse it to another party. This endorsement conveys to the party named (the endorsee) the right to receive the goods described in the order bill of lading. The order bill of lading is somewhat in the nature of a check, which may be endorsed to another party or parties. It is known as a negotiable instrument.

The steps in the use of an order bill of lading are usually as follows:

1. The manufacturer (or other shipper) delivers goods into the custody of a common carrier.
2. The shipper receives from the carrier an order bill of lading naming the shipper not only as the shipper but also as the consignee. The shipper has himself named as the consignee so that he has the right to endorse the bill of lading to whomever he pleases (since the consignee has the right to endorse the order bill of lading).
3. The shipper then notifies his dealer (or other purchaser) that the goods have been shipped and that the railroad (or other carrier) will notify the purchaser when the goods arrive at the freight station at the destination.

4. The shipper takes the order bill of lading he has received from the carrier and endorses it in blank. That is, in the space provided for endorsement he signs his name, but he does not fill in the name of the party who is authorized to receive the goods. This is equivalent to making out a check without putting in the name of the payee; it could be cashed by anyone in possession of it.

5. The shipper also draws a sight draft on the purchaser. This is a written order in which the shipper directs the purchaser to pay a specified sum of money (in this case the selling price of the goods). This sight draft usually names the shipper as the person to whom the money is to be paid.

6. The shipper takes the order bill of lading and the sight draft to his bank and endorses it either to the bank or in blank, as he did the order bill of lading.

7. The bank sends the order bill of lading and the sight draft to a bank in the city where the goods are to be delivered. (Sometimes this transaction passes through several banks if the shipper's bank does not have a regular correspondent bank in the city where delivery is to be made.) The order bill of lading and the sight draft are handled with extreme care, since they may be endorsed in blank. As in the case with any negotiable instrument, a thief might fill in his own name and present them at a bank in order to secure the value in cash, or he might present the order bill of lading to the railroad and receive the goods. Such documents usually are sent by registered mail in order to prevent loss in transit.

8. The bank in the city where delivery is to be made receives the order bill of lading and the sight draft. The bank notifies the purchaser that it has them and that the order bill of lading will be endorsed to the purchaser upon payment of the amount named in the sight draft.

9. The railroad meanwhile has carried the goods to its destination. At about the same time that the bank receives the sight draft and the bill of lading, the railroad will notify the purchaser that they have the goods, which they will deliver to him upon presentation of the order bill of lading.

10. The purchaser pays the sight draft at the bank and receives the order bill of lading endorsed to him. He can now go to the railroad office and receive the goods upon presentation of the order bill of lading.

This sounds like an involved way of arranging for cash-on-delivery, but it is being carried out in connection with thousands of shipments every day and works smoothly. The common carriers do not want to handle the millions of dollars involved in these transactions, as they would have to do if they handled cash-on-delivery shipments the way the Post Office does for relatively small amounts on parcel post shipments. The same effect is secured by this method, and the money is handled through regular banking channels.

Shipper's weight, load, and count. When shippers have their own loading facilities, it is customary for the shipper to load and seal the railroad car without the carrier's having any opportunity to check the nature, quality, weight, or quantity of the load. In such cases the carrier stamps the bill of lading with the words "Shipper's weight, load, and count" or words of similar intent. This means that the common carrier assumes no liability for loss resulting from short load or count unless it can be shown that the car was entered and goods removed before delivery.

It is railroad practice to keep a record of the car seals at the point of shipment, at all junction points where the car is turned over to another carrier, and at destination. When the shipper loads and seals the car and the seal record is clear, it is extremely difficult to place responsibility for shortage on the carrier. It is possible to break into a car and to reseal, but such occurrences are rare, and strong proof would have to be secured. For all practical purposes, the shipper is held responsible when there is a shortage in a car and the bill of lading contains a "shipper's load" notation. This means that the loss did not occur as a result of a transit risk and would not be covered under a transportation insurance policy.

It always is possible that the description of the goods in the bill of lading is in error, either through mistake or because of misrepresentation by the shipper. If the carrier can prove that it did not receive the goods as indicated by the bill of lading, it may be able to limit its liability to the shipper to the value of the goods actually received. As to an innocent third party, such as a consignee, however, the carrier under an order bill of lading is responsible for delivery of the goods listed in the bill of lading, even though it never received them. This liability may be lightened if the carrier inserts a statement in the bill of lading to the effect that it does not know the nature of the contents.

Most property is shipped under one or the other of the two classes of bills of lading described. Other types of bills of lading are used for export but not domestic shipments. It will be recalled that ordinary livestock cannot be shipped under a "released" bill of lading but that the carrier is liable for the full value. Ordinary livestock is shipped by railroad under the Uniform Livestock Contract Bill of Lading, which is similar to those already described except that there is no limitation upon the amount of recovery when the carrier is liable for a loss.

Tariffs

The contractual terms and conditions of the bills of lading make reference to the tariffs filed by the carrier. A tariff is a set of rules and rates for the shipment of freight. Interstate tariffs are filed with, and approved by, the Interstate Commerce Commission for use in connection with interstate shipments. A tariff is public information and is available for examination by anyone who desires to see it. Because it is public information, its terms are presumed to be known by all who ship goods by the carrier involved and are binding on shipper and carrier alike, even though the actual terms of the tariff may not be included in the contract of shipment. It becomes necessary, therefore, for the inland marine underwriter to have a knowledge of the provisions in the tariffs and of how their terms affect the liability of common carriers.

The railroad freight tariffs in use in the United States contain a freight classification list naming all the articles that may be shipped by freight. If an article is not listed, it may not be shipped by freight, but the railroads will refer the would-be shipper to the express companies. Notable among the articles not listed as permissible for freight shipment are valuable commodities such as money, negotiable securities, jewelry, gold, silver, and precious stones.

The tariff specifies a class for each commodity, and the class determines the rate to be paid. It also specifies the rules for limitation of value and the charges for value declared in excess of the standard value. The valuations are in cents or dollars per pound, and certain items will not be accepted for shipment at values in excess of certain specified amounts per pound. The tariff specifies a value per pound and the bill of lading is filled in with a value per

hundred pounds. The settlement of railroad freight claims is on the basis of the value per pound, and any partial loss is prorated.

Delivery and Acceptance of Goods

Delivery to the carrier. Less-than-carload lots [10] of freight ordinarily are delivered by the shipper to the carrier's freight depot and a bill of lading is issued by the carrier to the shipper. The actual receipt of the goods by the carrier and its acknowledgment by the bill of lading constitute delivery to the carrier. If pickup and delivery service is maintained for freight shipments, the trucker carrying merchandise usually acts for the railroad company, and the picking up constitutes delivery to the carrier.

The question of what constitutes delivery to the carrier may not have a simple answer when the shipper himself loads the car on a siding. The issuance of the bill of lading by the carrier after notification by the shipper that the car is ready will acknowledge receipt of the car, even though the railroad has not actually moved the car. Sometimes a bill of lading may be issued before the loading is actually completed. This might occur when the shipper intended to have a car loaded by late afternoon, ready for night or early morning movement, and the shipper would ask the freight agent to make out the bill of lading during the afternoon before the shipper closed his office for the day. If it could be proved that the loading never was finished and that the railroad never received the goods, the carrier might be able to avoid liability.

Delivery by the carrier. There have been many disputes over the question of whether the carrier had made delivery. Less-than-carload lots of freight are delivered through the carrier's freight station or warehouse, or by means of a pickup and delivery service. In either case the goods ordinarily are turned over to the consignee and a receipt is taken by the carrier. If the consignee is expected to pick up the goods, the carrier must mail a notice of arrival. The carrier's liability as a carrier continues for forty-eight hours from 7:00 A.M. after written notice of arrival has been sent or given to the consignee. After the expiration of the forty-eight hours, the liability of the carrier becomes that of a warehouseman, and it is then liable only in case of negligence. It is extremely important

[10] A less-than-carload lot of freight is a quantity smaller than is necessary to fill an entire freight car. It usually is abbreviated as "L. C. L."

for the consignee to take the goods before the expiration of the forty-eight-hour limit, because the burden of proof of negligence is on the consignee. For a further discussion of the liability of warehousemen, see Chapters XIII and XV.

Delivery also may be made on public team tracks,[11] in the case of full carloads. Notice is given to the consignee, and it is his obligation to remove the goods within the forty-eight-hour period. The carrier remains liable as a common carrier during this period until all the goods have been removed.[12] After the forty-eight-hour period, the carrier's liability becomes that of a warehouseman.

Sidetrack agreements. In the case of cars delivered to a private or semiprivate sidetrack, delivery is made by placing the car upon the sidetrack at a reasonable hour for unloading. There may be a sidetrack agreement between the carrier and the consignee, and its terms may have to be consulted to determine when delivery has been made. There is no forty-eight-hour notice requirement in connection with sidetrack deliveries. The question of delivery is important to the inland marine underwriter, because transportation policies ordinarily cover property only while it is in the hands of a common carrier in due course of transit. If the property has been delivered, it is no longer in transit or in the custody of the common carrier, and the policy no longer covers it.

The terms of sidetrack agreements signed by a policyholder should be examined by the inland marine underwriter. The agreement may contain some provision to the effect that the railroad may place carload freight on the siding at its convenience (without restriction as to hour of the day or night) and that such placing constitutes delivery. This waives the right of the policyholder to any notice and would allow the railroad to deliver at a time when the consignee might not be in a position to protect the car from damage or theft.

The terms of the sidetrack agreement also might relieve the consignee's insurance company of liability, because the placing of the car would constitute delivery and remove it from the custody of the common carrier. A loss after such a delivery would be likely

[11] A "public team track" is a railroad sidetrack with a driveway alongside that enables consignees to park their trucks at the freight car door and unload goods. Public team tracks are used by consignees who receive carloads of freight but who do not have private sidetracks.

[12] Michigan Central Railroad Co. v. Owen & Co., 256 U. S. 427, 65 L. ed. 1032 (1921).

to result in a dissatisfied policyholder if the consignee's insurance company denied liability. The assured should be informed in advance exactly what coverage is provided by the policy under the conditions brought about by the terms of the sidetrack agreement.

Carloading companies. In connection with the question of delivery to a carrier and delivery by the carrier to the consignee, the status of carloading companies must be discussed. It will be noted from an examination of the freight tariffs that the rates are relatively higher for small shipments than for large shipments. A carloading company is one that makes a business of collecting thousands of small shipments from shippers and consolidating them into carload lots. The carloads are handled by the railroads at carload rates, and the carloading company usually charges its clients a rate somewhere between the individual package rate and the carload rate. The carloading company usually arranges for pickup and delivery of the freight, either by means of its own trucks or by arrangement with public truckmen. The carloading company is able to operate at a profit on the difference between the single package rate and the carload rate, and the shipper gets the convenience of the pickup and delivery service, usually plus a part of the saving made by the carloading company.

The carloading company that handles interstate shipments is a common carrier operating in interstate commerce, and usually it issues a bill of lading identical with that issued by the railroads. If delivery is made to the carloading company, the shipper's rights of recovery are the same as they are against any other common carrier.

There is the possibility that a pickup may be made by a public truckman under circumstances that make him not an interstate common carrier but merely a local truckman or contract carrier. This is possible if it can be shown that the contract for hauling to the carloading company is strictly a local contract between the shipper and the truckman. In such cases, loss while the property is in the hands of the truckman might not be protected to the same extent as it is protected in the hands of a common carrier. How delivery is made to the carloading company or railroad is important to the inland marine underwriter.

It is also important to determine that the carloading company is forwarding the goods by railroad. There is a possibility that shipments are forwarded by motor truck, and in this case the tariffs and

bills of lading might make the rights of recovery different from those against a railroad.

Making Claim against Carriers

The contractual terms and conditions of the uniform bill of lading include provisions for the filing of claims for lost or damaged goods. The paragraph concerning the filing of claim reads:

> Sec. 2 (b) As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing this bill of lading, or carrier on whose line the loss, damage, injury or delay occurred, within nine months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid.

Some features of these provisions deserve attention. When goods are signed for by the consignee, it is customary for him to note on the receipt any damage or shortage. This is called a *bad order* notation and indicates to the carrier that there was damage or shortage. In case of concealed damage discovered after the receipt has been given to the carrier, the carrier is notified so that a representative can inspect the damage. It is important to know that a bad order notation or a request for inspection of concealed damages is not sufficient to qualify as a notice of claim. The claimant must file with the carrier a written claim for the damage or shortage. The insurance company's subrogation rights against the carrier will be impaired or lost if the notice of claim is not filed as stipulated. Therefore, it is important to both claimant and insurance company that a claim be filed promptly upon the discovery of a loss.

Concerning the form of notice, it was stated by a court that, "while the notice need not be in any particular form, it must possess the characteristics of a demand for compensation or amount to a notice of intention to claim compensation for loss suffered." [13]

The claim must be for an amount of damages. There have been

[13] Browning, King & Co. v. Davis, 120 Misc. 520, 199 N. Y. S. 775 (1923).

many disputes over what constitutes the actual loss of the claimant. It has been held by the Supreme Court of the United States that the amount of damage in the loss of a carload of grain was the value at the destination at the time the car should have been delivered. A provision in the bill of lading limiting recovery to the value at time and place of shipment was held invalid as contrary to the provisions of the Interstate Commerce Act as amended by the Cummins Amendments.[14]

This case was determined on the basis of a market value that could be ascertained accurately at the time and place of delivery. The determination of the actual value is more difficult when the claim involves commodities for which there is no open market comparable to the grain market.

There is no general rule that could apply to all cases, but the principle followed is to measure the loss to the claimant. If a sale of goods is involved, the value may be the cost of replacing the lost or damaged articles at the time they should have been delivered. The common carriers tend to take advantage of any trade discounts available to the claimant and would seem to be justified in doing so, because these affect the actual loss. Carriers would not seem to be justified in taking advantage of cash discounts unless the settlement is handled in such a way that the cash discount actually is allowed.

The shipper or consignee can collect damages for unreasonable delay when such delay results in a loss. An example would be a case in which a shipment of seasonable merchandise was sent in plenty of time to reach its destination for sale but delivery was delayed until after the season had passed. The claimant could collect the difference between the market value at the time the goods should have been delivered and the market value at the time they were delivered.

The carrier is not permitted to promise a definite delivery date unless it has filed a tariff providing for such expedited service. The Interstate Commerce Act is based upon the principle that all clients of common carriers must be given equal service and that there can be no discrimination. Carriers might be tempted to promise special delivery service to favorite customers if the law did not provide that any special services must be made available to all shippers.

[14] Chicago, Milwaukee & St. Paul Railway Co. v. McCaull-Dinsmore Co., 253 U. S. 97, 64 L. ed. 801 (1920).

The consignee ordinarily should accept goods even though they are damaged. Under many circumstances, bills of lading authorize carriers to sell goods that are refused, and this would jeopardize the consignee's rights to collect damages. The usual procedure is to accept the goods, making an appropriate notation of any damage or shortage, and then make every effort to salvage the goods and sell or use them to the best advantage.

When claims have been denied or are unpaid, it is important that suit be filed against the common carrier within the time limit specified in the bill of lading. Under the terms of the Interstate Commerce Act, the time limit for filing suit cannot be less than two years and one day after the carrier has given notice in writing that the claim is disallowed. Negotiations by the carrier for settlement after the notice has been received cannot be relied upon as a waiver of the time limit for filing suit.

Common Carrier Shipments Other than Railroad Freight

Common carrier liability in handling baggage. All the discussion of common carrier liability up to this point has referred to that of the railroads in hauling freight shipments between states—that is, in interstate commerce. This liability is basic to all common carrier liability in the United States, and other forms of such liability will be discussed as variations from it.

One important variation is in connection with passenger baggage. The railroads have filed baggage tariffs with the Interstate Commerce Commission providing for the handling of a certain amount of personal baggage in connection with a passenger's travel on the railroad. The baggage tariffs define personal baggage to include wearing apparel and personal effects of such a nature that a traveler would use them for his own purposes during a trip, but excluding any articles for sale and also certain prohibited articles of such a nature that the railroad could not handle them conveniently or safely in its baggage cars. Sample baggage is defined to include samples of merchandise and catalogues such as a salesman would use in selling his wares.

Valuation is limited by the tariffs to a nominal amount per piece or per passenger unless a higher value is declared and an extra charge paid. Usually the tariffs also specify a maximum value that may be set. Other rules in the tariffs deal with the methods of

making claims, charges for excess value and weight, and rules for the handling of baggage. One important rule that may affect merchandise is an emergency provision for the carrying of merchandise other than personal or sample baggage. This has been used at times to permit the carrying of goods normally sent by express that the express companies were not able to handle by reason of strike or other emergency. The value to be allowed in such cases usually is not in excess of $25. If an insurance company should cover such a shipment, it would be able to recover only $25 from the common carrier in case of loss or damage.

Special baggage car service is provided when a group of people need an entire car. A typical example of such a group would be a theatrical troupe. This baggage car is carried by the railroad under a special contract, and a provision usually included in such contracts limits the liability of the railroad to that of a bailee.

The shipper of baggage is presumed to know the contents of the tariffs filed by the carriers and is bound by them even though the provisions are not printed on the baggage receipt. The tariff as well as the baggage receipt must be examined in order to determine what the carrier's liability is in connection with lost or damaged articles.

Railway Express shipments. Shipments by express are handled more rapidly than freight shipments, and this service usually includes pickup and delivery. The best known express organization is the Railway Express Agency, an organization owned by the railroads for the purpose of providing this expedited service. The liability of the express companies is basically the same as that of other interstate common carriers. The uniform express receipt serves the same purpose as the uniform bill of lading. There is a special receipt for livestock and another special receipt for fine arts. The insuring of fine arts during shipment by express will be considered in the chapter on fine arts insurance.

The value limitation in the uniform express receipt is $50 for each shipment or fifty cents per pound for shipments in excess of 100 pounds. The valuation may be increased by the payment of an extra charge. The receipt includes a space in which the declared value of the shipment is to be inserted.

There is a long line of court decisions supporting the right of the express companies to limit the recovery of shippers according to a declared value and according to the relative charges paid. The

basic case is that of Adams Express Co. v. Croninger, decided in 1913 and referred to previously. This case had a profound influence on freight as well as express shipments and established the principle that charges for carrying goods should bear a relation to the amount for which the carrier would be liable in case of loss or damage.

In a more recent case (1947) the United States Circuit Court of Appeals for the Seventh Circuit upheld a fifty-dollar limitation on a $4,880 mink coat, even though the valuation was placed upon it by a hotel employee who delivered the coat to the express company for the owner. Apparently the owner did not read the receipt until after the loss had been discovered and did not call the attention of the express company to the grossly inadequate valuation. The court decided that the hotel employee was the agent of the owner, that the express company's receipt was binding upon it in regard to the charge it could make, and that it was equally binding upon the owner for the amount she could collect.[15]

There is an important difference between the settling of claims for partial loss under the express receipt and under the bills of lading used for freight shipments. It will be recalled that the bills of lading provide for a valuation per pound, whereas the express receipt puts a value upon the entire shipment. Freight claims are settled pro rata according to the limit per pound. Express claims, however, are settled in full up to the limit in the receipt. For example, suppose a 100-pound shipment is valued at fifty cents per pound for freight purposes and at a maximum of $50 for express. Further, suppose that forty pounds of the shipment are lost with an actual loss to the owner of $75. The freight claimant would receive $20 (at fifty cents per pound), whereas the express claimant would receive $50 (the maximum amount declared on the receipt).

There are package consolidating companies in the express field similar to carloading companies in the freight field. The relative cost of shipping by express becomes less as the weight of the shipment increases. A considerable saving in express charges is secured when numerous shipments can be combined into one. For example, a large Chicago department store may receive packages every day from a dozen different sources in New York City. It will instruct its New York shippers to send all their express packages to a package consolidating company, which will combine into a single

[15] Feinberg v. Railway Express Agency, 163 F. (2d) 998 (1947); cert. den., 332 U. S. 847, 92 L. ed. 230 (1948).

express shipment all of the packages consigned to that department store. The saving in express charges is split between the store and the package consolidating company. This is important to the inland marine underwriter, because the packages usually are received at the loading platform of the consolidating company amid a rush of afternoon deliveries, and the chances for theft are considerable. It is important to determine whether the consolidating company is a common carrier or is acting for the shipper or consignee, and under what terms.

Intrastate shipments. Most shipments move under uniform bills of lading or uniform express receipts, but there may be circumstances in which the liability of carriers will be different for shipments within a single state. This is most likely to occur in connection with the change from carrier's liability to warehouseman's liability when the goods have reached their destination. In the absence of a contractual provision to the contrary, it is the rule in some states for the liability of a common carrier on an intrastate shipment to become that of a warehouseman when the goods reach its warehouse at the destination. A notice of arrival to the consignee may not be required.

Tariffs filed with state railroad or transportation commissions should be consulted for the provisions applying to shipments within a particular state. This may be especially important in case of loss by fire. Common carriers are liable for loss by fire to goods in their custody, but a warehouseman is liable for a fire loss only if he is negligent. If the carrier's liability becomes that of a warehouseman upon arrival of the goods in its warehouse at destination, there is much less chance of recovery from the carrier in case of loss at that point. This should be determined in advance by the underwriter if a policyholder has a considerable number of intrastate shipments subject to fire loss in a carrier's warehouse.

Water-borne shipments. There are occasions when shipments insured under inland marine policies will be carried by water carriers. This carriage may include lighterage across bays or rivers, or it may involve coastwise steamers. The uniform freight bills of lading contain a provision that "the term 'water carriage' in this section shall not be construed as including lighterage in or across rivers, harbors or lakes, when performed by or on behalf of rail carriers." That is, lighterage in connection with a rail journey is considered part of the rail journey and not carriage by water. The

effect of this is that any loss or damage occurring during such lighterage is subject to the same rules and liability as would apply if the loss or damage occurred during some part of the actual rail journey.

The situation is entirely different in connection with water-borne losses occurring otherwise, even though the goods are shipped on a through bill of lading issued by a rail carrier. The bills of lading provide for the handling of water-borne losses according to the general rules applying to such losses.

Ocean marine liability is much different from common carrier liability of the railroads and will not be discussed here. If the coastwise ships are in direct competition with railroads, they may assume a liability similar to that of the railroads or they may arrange automatically for marine insurance on the cargo. In other cases, if there is no direct rail competition, the water carriers may make no provision for marine insurance. The situation is likely to be different between East Coast ports and ports on the Gulf of Mexico. It also may be different in the case of Pacific Coast ports. The underwriter who has a prospect using water carriers should investigate carefully the liability of the carriers and the insurance that may be provided automatically. It may also be advisable to examine the tariffs that have been filed, including the joint rail and water tariffs that may have been filed to cover the particular segment of route involved in the shipments to be insured.

Motor and air carriers. Since 1920 the motor truck has taken over an ever-increasing amount of freight hauling, and World War II brought about a large increase in the carrying of freight and express by airplane. Operators of motor trucks in interstate commerce are subject to the Motor Carrier Act of 1935 under the supervision of the Interstate Commerce Commission. Airplanes carrying cargo are subject to the economic regulations of the Civil Aeronautics Board. These two types of carriers are so different from the railroads in their operations, regulation, and liability that special chapters will be devoted to each, as well as to the insuring of the carrier's liability and of the cargo carried by them.

Questions

1. What is the liability of a common carrier?
2. What is the purpose of the Interstate Commerce Act?

3. What changes in common carrier liability were brought about by the amendments to the Interstate Commerce Act in 1906 and 1915?

4. What principle of recovery stated in the First Cummins Amendment to the Interstate Commerce Act forms the basis for the subrogation rights insurance companies enjoy against common carriers?

5. What is a bill of lading?

6. What is the essential difference between a straight bill of lading and an order bill of lading?

7. What is the significance of the words "shipper's weight, load, and count" on a bill of lading?

8. What is a tariff?

9. Why is it important for an inland marine underwriter to understand what constitutes delivery to or by a common carrier in connection with insured shipments?

10. How do sidetrack agreements affect the liability of a railroad for goods in its custody?

11. What is the function of a carloading company?

12. Name the principal requirements for filing notice of claim against a common carrier.

13. What is the difference between the settling of partial loss claims under the uniform bill of lading and under the uniform express receipt?

14. In what important respect may the liability of a common carrier for an intrastate shipment be different from its liability on an interstate shipment?

CHAPTER VII

Transit Insurance Coverage

In the general category of transit insurance are grouped those coverages that indemnify the owner of property for loss that may occur while his property is being carried from one point to another. Transit insurance policies usually cover property while it is in the hands of others and not under the control of the owner, although such policies may be written to cover property being carried on vehicles belonging to the owner of the property.

The transit policy serves three purposes for the benefit of the policyholder.

Its first purpose is to guarantee immediate payment of a loss for which a carrier may be held liable. Transit insurance first became popular on a wide scale when businessmen found it difficult to collect freight claims from the railroads during World War I. The carrying of insurance permitted them to collect immediately for lost or damaged merchandise and relieved them of the burden of collecting from the carrier. Although freight claims came to be handled by the railroads in a reasonably rapid way after the war, businessmen still found it convenient to pass the collection problem along to insurance companies by purchasing insurance coverage.

A second function of the transit policy is to indemnify the assured for any loss in excess of the liability of the carrier. The carrier may have filed a tariff that provides for a maximum valuation insufficient to cover the full value of the property. This is especially likely to happen during periods of rising prices, because the maximum valuations specified in the tariffs often stand for many years without revision. The policyholder frequently finds it to his advantage to declare a nominal value to the carrier and to arrange with the insurance company to insure the excess. The excess valuation charges of the carriers usually are higher than are the insurance premiums for the same amount of protection.

The third purpose of the transit policy is to protect the assured against losses for which the carrier is not liable. The carrier is not

liable for "acts of God," which may include such insurable hazards as windstorm, tornado, and earthquake.

The liability of a common carrier is extensive, and the insurance company expects to recover most of the losses it pays on goods lost or damaged while in the custody of a common carrier. The rates for transportation insurance are low because the insurance companies do have excellent chances of recovering their losses under their subrogation rights against common carriers. The rates would be many times higher than they are if the insurance companies had to assume the full obligation of paying for goods lost or damaged in transit.

Transit insurance policies are tailored to fit the circumstances of individual policyholders, and there is no standard form or policy. No matter what a prospect's business, the inland marine underwriter usually can design a coverage to fit the requirements. It may truly be said that there are as many different forms of transit policies as there are businesses in the United States.

Standardization has not been feasible because every business has its own way of shipping merchandise and no two merchants receive their goods from the same set of shippers or over the same routes. One merchant may receive the bulk of his goods from manufacturers in New York City and it may be shipped mostly by railroad. Another merchant in the same business and to all outward appearances subject to the same hazards may buy his goods from wholesalers and manufacturers in Cleveland, Pittsburgh, and Birmingham, and may receive most of his merchandise by motor truck. The variations are endless, and the insurance policy and rate must be adjusted to the needs of the assured and to the chances of loss.

Annual Transit Policies

The annual transit policy is written to insure the incoming (and sometimes outgoing) shipments of the policyholder during the policy term, usually one year. The general problems in connection with transit policies will be discussed subsequently. The provisions common to many transit policies will be described, but it must be kept in mind that any particular policy may vary from the usual provisions.

Annual transit policies usually enumerate specified perils, and loss or damage to the property described is covered when resulting from those perils. Land hazards usually covered include fire, light-

ning, cyclone, tornado, flood (meaning rising waters), earthquake, landslide, theft, and the perils of transportation. Sometimes the last phrase, "perils of transportation," is broken down into specific hazards such as collision, derailment, or overturn of the transporting vehicle and collapse of bridges. The flood coverage may be limited to the rising of navigable waters. The theft coverage usually is limited to the theft of entire shipping packages and excludes pilferage from packages. Strike, riot, and civil commotion coverage may be included.

Collision frequently is restricted in such a way that the coming together of cars during coupling operations is not deemed to be a collision. This is an important limitation because switching operations on railroads may result in violent bumps as the cars are coupled.

The annual transit policy usually includes coverage on waterborne goods while in course of transit by regular coastwise lines of ships between inland, Atlantic Coast, and United States Gulf Coast ports, but excluding the Pacific Coast. Policies may be written to exclude coverage upon the Mississippi and Ohio rivers and on the Great Lakes, or upon any waters where the underwriter feels that there is a hazard not contemplated by the rates acceptable to the prospective policyholder. Coverage while waterborne includes fire, perils of the sea, general average and salvage charges, and particular average (partial loss) if such partial loss exceeds three per cent of the value of each shipping package. Theft also may be covered. The water-borne coverage is extended to apply while the property is in depots and stations and on wharves, platforms, or piers while in due course of transit.

It is important to note that the water-borne coverage does not apply to exports or imports. The land coverage would not become effective on such imports until the ocean marine coverage had ceased to be effective and on exports would cease at the point where the ocean marine coverage became effective. Many policies exclude coverage on exports and imports entirely unless there is a special endorsement extending protection to them.

Transit policies cover "while the insured property is in the custody of" any railroad or railroad express company; regular coastwise line of ships navigating United States inland, Atlantic, and Gulf waters not south of the Gulf of Mexico; and public truckmen, land transfer, and land transportation companies, provided

these carriers are used in connection with railroad, railroad express, and the described water-borne shipments.

It will be noted that all the carriers mentioned are common carriers, and they are liable to the shippers under the rigid law of common carrier liability as previously described. The insurance companies' status in connection with shipments by such carriers is primarily that of serving the shipper by paying claims immediately and making collection from the carrier.

The phrase "while the insured property is in the custody of" deserves some comment. This has been discussed to some extent under common carrier liability. A question frequently arises concerning what constitutes delivery to the carrier and when the carrier effects delivery to the consignee. A misunderstanding may occur if it is customary for the policyholder to send the goods to the railroad or express station by his own trucks. A policy does not cover while the property is on the policyholder's own trucks unless there is a provision in the policy to that effect. The coverage on property in the custody of public truckmen usually is limited to shipments being handled in connection with shipment by railroad, express, or ship.

Mistaken delivery to an impostor has been held as not constituting delivery to the carrier. In one case in which the policy covered property while in the custody of a truckman and also while in the hands of the policyholder's messenger, a court ruled that an employee of the assured who helped load goods onto an impostor's truck was not a messenger. It was held that the goods never were in the custody of a truckman and never were covered by the policy.[1]

In another case in which the policy covered only while in the custody of a common carrier, the court held that delivery was never effected.[2] The facts were that the shipper's employee delivered the goods to a man who was standing alongside an express company truck and who was presumed to be an express company employee. It developed that the man was an impostor and the express company never actually had possession of the goods. Since the property never came into its custody, the express company was not liable for the loss and neither was the insurance company.

A clause in a transit policy extends the coverage to property while it is on wharves, piers, and bulkheads, in depots and stations, or on

[1] Starlight Fabrics, Inc. v. Glens Falls Ins. Co., 297 N. Y. 426, 79 N. E. (2d) 812 (1948).

[2] Hindus v. Scottish Union & National Ins. Co., 76 N. Y. Supp. (2d) 335 (1947).

platforms if it is in the custody of a common carrier incidental to transportation.

Another clause that seeks to make the coverage continuous has been adopted from the ocean marine "warehouse to warehouse" clause and reads:

> This insurance attaches from the time the goods leave the factory, store or warehouse at initial point of shipment, and covers thereafter continuously, in due course of transportation, until same are delivered at store or warehouse at destination.

The intent of this clause would be clearer if it repeated the phrase "only while in the custody of a common carrier." In the second case just mentioned, it was contended by the plaintiff that this clause gave coverage from the time the goods left the shipper's premises, or at least that there was enough ambiguity to permit the policy to be read that way. However, the court did not feel that the policy was ambiguous and held that it covered only while the property was in the custody of a common carrier. The intent of the clause is to prevent lapse of the coverage if the goods are placed temporarily in a storage location while in the course of transit. It is not intended to extend coverage to an actual storage situation when the goods are no longer in a state of transit.

Transit policies may be written to cover goods while in the hands of truckmen who are common carriers or while in the hands of any truckmen. (Truckmen who are not common carriers would be contract carriers, and their liability will be discussed in the chapter on motor truck cargo insurance.) Many underwriters believe that there is greater hazard of loss to property in the hands of truckmen than to property in the hands of the railroads. Rates for policies covering property in the hands of truckmen are from two to three times higher than for policies covering property only while in the custody of railroads and express companies.

Occasionally transit policies are extended to cover goods on a policyholder's own trucks. This introduces an entirely new factor into the underwriting because the insurance company must pay losses occurring to property on the assured's trucks with no chance of recovery from a carrier. If the exposure of goods to loss on the assured's trucks is of short duration or if the values exposed are low, the coverage may be added to a transit policy at a nominal cost. However, if the major part of the shipping is done on the assured's trucks, the hazards are primarily those of a motor truck

operation, and must be underwritten as such. This subject will be covered in a later chapter. Sometimes it is desirable to write two policies, one on the transit hazard in the custody of common carriers and another to cover the motor truck cargo operation.

It should be noted that shipments by mail are not covered by policies that insure property in the custody of common carriers. Shipments by mail usually are covered separately under a parcel post policy.

Accounts, bills, currency, deeds, evidences of debt, money, notes, and securities usually are not covered under an annual transit policy. Goods that have been refused or returned by the consignee usually are excluded also. It is considered that such property offers a hazard not contemplated in the rates for transit policies and must be insured under specific policies at adequate rates.

An annual transit policy excludes loss by leakage, breakage, marring, or scratching unless caused by fire, lightning, cyclone, tornado, or flood; or unless by collision, derailment, or overturning of the transporting vehicle while on land; or, if the shipment is water-borne, by the transporting vessel, craft, or lighter being stranded, sunk, burned, or in collision. This is intended to exclude the mysterious and unaccountable losses likely to occur in any transportation, especially if the shipper is careless about packing.

Another exclusion eliminates claims for damage due to delay, wet or dampness, and causes that make the goods become spotted, discolored, moulded, rusted, frosted, rotted, soured, steamed, or changed in flavor, unless they are made so by one of the specific perils named in the policy.

Damage by strike, riot, and civil commotion is excluded in many transit policies, but coverage against such losses frequently is added by endorsement. War damage is excluded and seldom is added. Any damage resulting from neglect of the assured is excluded, as is damage to merchandise shipped on the decks of ocean-going ships.

Valuation under transit policies. Policies may or may not include a clause defining the amount of loss. If there is no such valuation clause, the insurance company would be liable for the actual amount of any loss at the time and place of its occurrence. It is the duty of the assured to present a proof of loss setting out the value and supporting data.

Occasionally a policy specifies that the value is the invoice cost

at the time and place of shipment. As pointed out in the chapter on common carrier liability, this type of valuation could result in a difference between the liability of the insurance company to the assured and the liability of the common carrier, because the common carrier is liable for the actual loss and cannot specify a method of valuation.

A valuation clause may specify that the goods are to be valued at invoice cost plus prepaid freight charges and any other charges that may be due on the shipment plus an allowance of five to ten per cent to cover the expense of replacing the goods. This latter charge is not included if the policyholder would not be put to expense in replacing the goods ordinarily covered under the policy.

Limits of liability. Transit policies ordinarily show two limits of liability. The first is a limit of liability in any one place. This should be set high enough to protect the largest value that could accumulate at any place of shipment or anywhere along the route over which shipments travel. The largest amount shipped or received in any one day is a good indication of this figure, and examination of routes should be made to determine whether holidays or delayed shipments could result in an accumulation of two or three days' shipments.

The second limit of liability applies to any one disaster. A conflagration or forest fire might involve several locations within a community. A hurricane or flood might involve several communities and could destroy a number of shipments spread over a large area. The insurance company must know the maximum amount it could pay as a result of such an occurrence. The determination of this limit depends upon the total amount of goods in transit within the same geographical area over a period of several days or perhaps of several weeks.

The maximum limitation on liability must be worded carefully to include not only the loss and damage itself but also any salvage charges or other expenses. A commonly used clause reads:

> This company shall not be liable for more than ——— dollars in any one casualty, either in case of partial or total loss, or salvage charges or other expenses or charges, or all combined.

Recoveries from common carriers. The history of transit insurance reveals a struggle on the part of common carriers to secure the benefit of any insurance carried by the owner of the property. There were equally strong efforts on the part of the insurance

companies to hold the carrier liable for all losses for which the carrier is responsible. The uniform bill of lading provides that the carrier shall have full benefit of any insurance that may have been effected on the property, so far as this shall not avoid the policies or contracts of insurance. If this clause were permitted to have effect, the insurance company would have to pay the loss without any hope of recovery from the carrier.

In order to protect their interests and be able to recover from the carriers, the insurance companies have inserted in transit policies a warranty that the insurance "shall not inure directly or indirectly to the benefit of any carrier, bailee or other party, by stipulation in bill of lading or otherwise, and any breach of this warranty shall render this policy null and void." It will be seen that the wording aims directly at the clause in the bill of lading that attempts to secure the benefit of insurance for the carrier, because it provides that the policy would be rendered void if the carrier does benefit.

Many policies have been written with an additional clause strengthening the position of the insurance company. It provides that any act of the assured, whether prior or subsequent to the date of the policy, that impairs the right of the assured to collect the full value of any loss or damage from a carrier or bailee shall invalidate the policy. Impairment of the assured's right to collect would automatically impair the insurance company's right to collect under a subrogation agreement.

The presence of these two clauses in unmodified form presents a serious problem to shippers. It is customary to ship goods under released bills of lading in which a specified value or limit of liability is stipulated. As a matter of fact, it is impossible under railroad tariffs to ship some types of merchandise without specifying a limit of liability. Under a strict interpretation of the clauses described, it would be impossible for a shipper of goods to collect from his insurance company.

This problem has been met in many cases by endorsing on the policy permission for the assured to release carriers to a valuation of not less than a specified amount. If the shipments are largely by railway express, the endorsement may give permission to release the carrier for not less than $50 per package. If the shipments are largely by freight or by motor carrier, the endorsement may be

worded to give permission for the assured to accept the ordinary bills of lading issued by carriers.

If the policy includes permission for the assured to accept bills of lading or to release the carrier to a stipulated value, the policy may contain another provision to the effect that the assured will not enter into any special agreement with a carrier without the written permission of the insurance company.

The emphasis in this clause is on the word "special." Ordinary bills of lading may be accepted, but if the assured enters into any agreement that is special or not customary to that type of shipment, the coverage is void. Insurance rates and underwriting are based upon the recoveries to be expected under the ordinary bills of lading or express receipts, and the insurance company needs to know the circumstances of any special agreement so that the rates may be adjusted to fit the hazard.

In determining what may be considered a special agreement, the courts are regarded as likely to take into consideration the customs of a business. A preceding chapter described the arrangements under which the effects of a troupe of actors may be carried as baggage in a special car. The agreement customarily used calls for a release of the carrier's liability except for negligence, and as a bailee rather than as a carrier. In a case involving a fire loss for which the carrier would have been liable as a carrier but for which it was not liable under the special baggage agreement, the court decided that this was not a special agreement within the meaning of the insurance policy because it was customary for show troupes to travel in that way and the underwriter is presumed to be acquainted with the practices of the trade he insures.[3]

Passage of title to goods in transit. The sales contract between shipper and consignee usually specifies that the goods are shipped F.O.B. a designated point, either the point of shipment or the destination. "F.O.B." means free on board and originated in the shipping of goods by water carrier. The usual arrangement is for goods to be shipped F.O.B. the point where the carrier's liability begins. That is, the shipper will deliver the goods to the railroad company or will put them in the custody of the express company.

The terms of the sales contract in this respect are important, because the title to the goods ordinarily passes from shipper to consignee at the point where they are F.O.B. If they are sent

[3] Globe & Rutgers Fire Ins. Co. v. Winter Garden Co., 9 F. (2d) 227 (1925).

F.O.B. point of shipment, they usually belong to the consignee from then on and any claim to be made against a carrier for loss or damage will have to be made by the consignee. If they are shipped F.O.B. the consignee's location, the title remains in the shipper until they are delivered, and the shipper would make claim against the carrier for any loss.

There may be circumstances in which a shipper will be responsible for delivery of goods to the consignee even though technically he has made delivery when the goods are placed in the hands of the carrier under an F.O.B. point of shipment arrangement. The shipper may wish to assume this responsibility for business reasons. In such cases the shipper's transit policy should be endorsed to include coverage on shipments until they are delivered to the consignee, regardless of the terms of the sales contract in respect to the F.O.B. provisions. This extension may be granted by a simple endorsement reading substantially as follows:

> This policy is hereby extended to cover shipments sold F. O. B. point of shipment or otherwise and the interest of the assured in such shipments is admitted.

Annual transit policies covering incoming goods ordinarily cover the property from the time it is placed in the hands of the carrier at point of shipment. In writing such a policy, inquiry should be made regarding the customs of a particular business, in order to avoid overlapping insurance coverage between shipper and consignee.

There is a possibility of questionable title if the shipper is negligent and does not declare a sufficiently high value when he delivers goods to the carrier. A circumstance might arise in which the goods are shipped F.O.B. point of shipment but the shipper is negligent and releases the carrier at an amount far below the actual value. This would prevent the consignee's collecting full value from the carrier in case of loss, and the consignee might be able to collect from the shipper for the difference. The rights of the consignee's insurance company to collect from the carrier would be impaired, and the insurance company might well proceed against the shipper.

Rates. The range of rates for annual transit coverage when property is insured while in the custody of railroads or in connection with railroad shipment is from about two cents to ten cents per $100 of value shipped. The exact rate depends on the distance goods are shipped, whether there is any trucking of the property at

the terminal points, and the susceptibility of the property to damage or theft. Occasionally policies are written at rates as low as one-half cent per $100 of value when the underwriter believes there is only a remote chance of his company's sustaining a loss not collectible from the carrier.

Some policies show different rates for different methods of shipment. In such cases, the assured is required to report the value of the goods shipped by each method of transportation, so that the premium can be calculated separately for the values carried by each type of carrier.

Basis of premium computation. The premium for an annual transit policy is based upon the total value of all the goods covered during the term of the policy. In this respect the policy differs from other insurance policies, for which the premium is based upon a limit of liability. In the case of an annual transit policy, the premium is figured by applying the rate to the value of the goods insured (that is, the value of all the goods shipped that come within the definition of coverage in the policy).

It is impossible for a merchant to determine accurately in advance what his annual sales and merchandise receipts and shipments will be. Consequently it is customary for annual transit policies to be written on a reporting basis. If the annual premium is small, the policy may be written on an annual reporting basis. The policyholder estimates his receipts or shipments as closely as possible and pays an estimated annual premium. At the expiration of the policy, he makes a report to the insurance company of the actual values covered by the policy. An adjustment is then made in the premium, and he pays any extra premium due or receives a refund of any overpayment.

Many transit policies produce sufficient premium to justify a monthly reporting of values and monthly premium payment. Company practices differ in regard to what constitutes a premium large enough for monthly reporting. Some companies feel that monthly reporting is not justified unless the premium averages at least $50 per month, whereas others will write such a policy for a monthly premium as low as $10. The factor to be considered is the expense to both policyholder and insurance company of handling the reports and payments.

It is customary for a policy to provide for a deposit premium that may be a quarter or a third of the estimated annual premium.

In many cases the monthly premiums for the first few months are charged against the deposit premium, and the policyholder starts making actual payments only when the deposit is exhausted. Sometimes the policy provides that the premium payments start immediately, and the company holds the deposit until expiration, upon which a final adjustment is made. This latter arrangement is used in some cases when the company has doubts as to the policyholder's ability or willingness to pay all the premium or when his financial position is questionable.

Because the insurance company must receive accurate reports of the values insured, the policy contains a clause governing the reporting of values. This clause constitutes a warranty or an agreement on the part of the policyholder that he will report to the insurance company the actual values shipped that are covered by the policy. The same clause usually contains the rate and the provisions for payment of the premium. The premiums are due when the report is made, and it is customary for the premium payment to be sent with the report.

The policy usually requires that the policyholder keep a record of all values shipped that are covered by the policy. That is, he not only must report them to the company, but he also must keep an accurate record that the company may check at a later date. Many companies make it a practice to have an auditor check the books of the policyholder before final settlement is made at the expiration of the policy. The knowledge that such a check will be made is a deterrent to the policyholder who might be tempted to omit part of the values, and it reveals honest mistakes, which may be in favor of either the assured or the company.

It is possible to write transit policies on a continuous reporting basis. These differ from the policies just described only in that the policy has no expiration date and continues in effect until cancelled by either party. Monthly reporting is required just as in a policy that expires annually, and the company makes its audits periodically to see that the reports are made correctly.

Occasionally policies are written for a flat annual premium with no provision for adjustment. This can be done in the case of a small, steady business, which is not likely to fluctuate from year to year. Companies require prospects to submit reports of previous shipments and insurance experience. Many underwriters consider at least three years' reports to be necessary for a satisfactory esti-

mate. At expiration and before the next year's policy is issued, the record again will be examined to see whether any change in rate or premium is justified.

Variations in Annual Transit Policies

Railway Express transit form. A variation of the annual transit form is the "Railway Express transit form." This usually is written for policyholders whose shipments are exclusively by Railway Express, and it provides a broader coverage than it would be feasible to give if several types of carriers were used regularly. In addition to the coverages provided under other annual transit policies, it protects against pilferage and nondelivery.

It will be recalled that the Railway Express companies are not liable for more than $50 per shipment (or fifty cents per pound for shipments in excess of 100 pounds), unless a greater value is declared and an extra charge paid. The extra charge usually amounts to ten cents for each $100 of value or fraction thereof. The "Railway Express transit" insurance coverage permits a policyholder to accept the minimum valuation allowed by the express company, and the insurance policy pays for any loss in excess of the amount for which the express company is liable. The rates for this coverage are less than the ten cents per $100 charged by the express company and may be as little as three cents per $100. The policyholder saves the difference between the express company charge and the insurance rate, and in addition is saved the trouble of declaring the exact value when it exceeds the $50 minimum express company liability. The policy contemplates that the assured will collect from the express company up to the amount of its liability. When incoming shipments are covered by a "Railway Express transit form," the shippers should be instructed by the assured not to declare any excess value to the express company.

Shipments by air express are not covered by the usual policy, but coverage may be endorsed on the policy. The rate is higher than for railroad shipments. If both rail and air shipments are covered, there may be a separate rate for each, and in this case the policyholder must report rail and air shipments separately.

Department store transit policy. The insurance needs of department stores are different from those of other mercantile and manu-

facturing risks, and the insurance companies have developed a special transit policy to fit their requirements. The coverage is at least as broad as the annual transit policy generally used, and in many cases it covers against loss "from any external hazard." This is broader coverage than is provided by a specified perils policy, as explained in the chapter on "all risks" coverage.

The property covered includes goods being delivered to customers, but it excludes property of customers that is intended for storage or repair. That is, it covers property that is being delivered to a customer who has purchased it, but it does not cover property already belonging to the customer that the store is picking up or returning. This exclusion is necessary to avoid overlapping coverage with such bailee insurance policies as the furriers' customers policy, which will be discussed in another chapter.

The department store transit policy covers property while it is in the hands of common carriers, including railroads, express companies, air carriers, and truckmen, and also while on the assured's own trucks and in the hands of its messengers. Losses are settled on the basis of the invoice cost plus a percentage (frequently ten per cent) to cover handling, and in the case of goods being delivered to customers the policy may provide for loss payment on the basis of the retail sales price. There is usually an actual cash value clause to cover those cases in which there is no invoice upon which to base the value.

The premium is based upon the assured's gross sales. This has practically the same effect as basing it upon the value of the merchandise shipped and is a much easier figure for the store to secure. The premium may be payable annually and adjusted at expiration or may be payable monthly, depending upon the amount of the premium.

Contingent transit coverage. There are occasional policyholders who wish to make their own collections from the carriers and who desire insurance coverage only for the losses they cannot collect from the carriers. They have their own traffic departments and are in daily contact with their carriers.

These policyholders may desire a contingent policy that pays a loss only after the policyholder has exhausted every effort to make collection from the carrier. The rates are low because the insurance company does not have to bother with numerous claims and does

not have the trouble of collecting them under subrogation. This form is desirable only for the policyholder who is well able to make his own collections and who needs coverage only for those catastrophes for which the common carrier is not liable. The coverage under these policies is the same as that under other transit forms, but loss payment is contingent upon the assured's making the primary effort to collect.

Trip Transit Policies

The trip transit policy serves the same purpose as the annual transit policy, but it is issued to cover a specified lot of goods on a particular trip. It is used to insure people or organizations that ship only occasionally and do not have sufficient shipments to justify an annual policy. It is used, for example, in connection with shipments of household furniture, heavy machinery, and merchandise or livestock en route to and from exhibitions.

The policy issued to provide trip transit coverage is sometimes called a certificate, because it is an abbreviated form and does not look so bulky as the typical insurance policy. However, it contains the usual conditions of a transit policy. The certificate contains a description of the merchandise being shipped, the place of shipment and the destination, the mode of transportation, and the name of the carrier if it is going by motor truck. A limit of liability is specified, and if the property is commercial goods, there is a clause that will determine the value in case of loss.

The coverage is usually the same as that described for the annual transit form. Variations are possible, depending on the needs of the policyholder. In case the goods consist of a valuable machine, the policy may include coverage during loading and unloading. The insurance company will want to know who is the carrier, as well as his qualifications for taking care of the type of equipment to be handled. The moving of machinery is a highly specialized business, and insurance companies ordinarily will not insure machinery under a trip transit policy unless the carrier is known to be competent.

Household goods may be insured under a trip transit form for the owner, particularly when they are being shipped by railway freight. However, there is a form of trip transit certificate issued for regular furniture movers in connection with their motor truck

operations. This will be discussed in connection with motor truck cargo insurance in a later chapter.

A trip transit certificate may be issued to cover during temporary storage while in transit as well as during the actual movement. Sometimes household furniture is stored temporarily before it is sent on to its final destination. The trip transit coverage can be written to cover from the time the property leaves its original location, during transit to the temporary location, while in temporary storage, and while in transit to its final destination. The coverage during temporary storage should be limited to thirty days as specified in the "Nation-Wide Definition" for such circumstances.

The policy also can cover a shipment while it is being sent to a temporary location for exhibit and while it is on exhibit, as well as on the return trip. This type of policy is commonly used to cover livestock when shipped for exhibition purposes. It may be used also when goods are shipped to a factory or other plant for repair or renovation.

The rates for trip transit coverage vary all the way from one cent to $1.00 or more per $100 of value. The principal variables are the type of carrier, the length of the trip, and the type of property. The lowest rates are given to merchandise shipped by railroad freight under a uniform bill of lading. The rates are higher when the goods are shipped under a released bill of lading, because the insurance company is more likely to have to pay a portion of any loss. The rates also increase when goods are shipped greater distances. Rates usually are higher for motor truck shipments than for comparable railroad shipments.

Shipments of purebred livestock may cost much more than other goods to insure; these rates may be two to four per cent of the value for a long shipment by motor truck. Easily damageable articles, such as fine arts and antiques, also take high rates, depending on the carrier and on the knowledge of the shipper and the carrier regarding the handling of such special types of property.

It is important that the premium for a trip transit policy be collected when the order for it is taken. It is a unique policy in that the period of possible loss usually has passed by the time the policy is delivered. The prospective policyholder frequently calls his insurance agent when the goods are ready to leave and asks for immediate coverage.

Insurance on Parcel Post Shipments

Since the parcel post service was established in 1912, a large part of the commerce of the country has been carried on through the Post Office. The Federal Government is not a common carrier, and it does not incur any liability for the property it carries in the postal service unless the property is insured by the Post Office. Annual transit and trip transit policies exclude coverage on parcel post shipments. This exclusion is necessary because of the position of the Post Office as a carrier and the fact that it does not have the liability of a common carrier.

Insurance company coverage of parcel post shipments must be underwritten on an entirely different basis from that on which coverage for shipments made by common carrier is provided, and it is customary to issue separate policies covering parcel post shipments. Coverage on property sent by unregistered mail or by ordinary parcel post is primary insurance, and the insurance company is obligated to pay the loss with no chance of subrogation against the carrier. The only chance of subrogation is in the rare instance when collection could be made from a third party who was responsible for a loss while the property was in the custody of the Post Office.

Parcel post is used commercially by thousands of firms. In addition to the nationally known mail order houses, many other concerns sell entirely or largely by mail. Some of them handle specialty items not generally available in stores, some ship such articles as cigarettes from states with low taxes into states with higher taxes, and others cater to the people who like to purchase from catalogues rather than from store counters. Parcel post is used also by city stores for delivery to their suburban customers, for the cost frequently is less than the cost of sending the same package by a parcel delivery service and next-day service by parcel post is available in most metropolitan areas. Almost every merchant has occasion to send some packages by parcel post, and many use this method of shipment to the exclusion of all others.

Coverage under parcel post policies. There are two forms of parcel post insurance. The coupon or certificate form is sold to concerns having relatively few shipments a year, whereas the open form is better adapted to the shipper of a large number of packages. The coverage is identical, the only difference being in the mechanics

of recording and paying for the insurance. The coverage is almost "all risks," for the property is protected against loss or damage from any external cause, including nondelivery, subject to exclusions peculiar to this policy. The type of property must be described specifically in the policy and must be property usual to the business of the policyholder.

The policy covers as soon as the property passes into the custody of the Post Office at the point of mailing, while it is in transit by registered or unregistered mail or by parcel post, and until it is delivered at the address of the consignee shown on the package. Domestic policies limit delivery to points within the continental United States, Canada, and Alaska, but foreign coverage can be arranged. The policy does not cover while the property is in the hands of any messenger on its way to the Post Office.

The question of what constitutes delivery into the "custody of the Post Office Department" may be troublesome. Frequently parcels are placed in collection boxes, and sometimes they are placed alongside or on top of them. The collection service is maintained for the convenience of the public and is not required by the postal laws. The postal regulations do not require that the postal employees pick up other than first class mail. They are not required to pick up mail deposited outside a mail box, although it is a Federal offense to steal mail so deposited. Here is a peculiar situation, for a person who steals such mail, which the postal employees are not required to pick up, is nevertheless subject to prosecution for stealing from the United States mail. A concern that makes it a practice to deposit packages outside collection boxes is taking a chance that its parcel post insurance will not cover such packages.

As is true with policies of the "all risks" type, the exclusions are important in defining the actual coverage. Perishable merchandise is covered only against the perils of fire, theft, pilferage, and non-delivery. The Post Office assumes no responsibility for speedy delivery, and insurance companies could not afford to insure perishable merchandise against spoiling.

The policy does not cover accounts, bills, currency, deeds, evidences of debt, money, notes, or securities. This type of property is subject to an extreme theft hazard, and the values can be so tremendous that the parcel post insurance rates are not adequate

for the hazard. They may be insured under registered mail policies, which will be discussed later.

Another exclusion refers to merchandise shipped on consignment, memorandum, or approval. Such property is not covered unless it is shipped in fulfillment of an order or request, or is consigned to parties to whom the policyholder previously has sold goods. Some firms have made it a business to ship goods to people without orders, upon the theory that most people will pay for the goods rather than go to the trouble of sending them back. Of course, the recipient is under no obligation to pay for something he did not order, but many people do not realize that. There is a natural tendency for the recipient to be careless about such a package and to deny that he ever received it. In addition to the obvious hazards of insuring such merchandise, there is the likelihood that a firm engaged in this type of business would not be a desirable policyholder.

It is important that all packages be addressed correctly and fully, that they be wrapped securely, and that the postage be prepaid in full. There is a provision in the insurance policy excluding coverage on packages that do not meet these requirements.

Another exclusion relates to shipments to transients at hotels unless they are sent by registered mail or government-insured parcel post. This is necessary because it is difficult to trace the delivery of packages in hotels unless there is a signed receipt for the delivery. Occasionally this exclusion is amended to permit the mailing of packages to salesmen of the assured who are residing at a hotel or who are known there and expected to arrive. It is believed that there is less chance of loss if the package is addressed to an employee of the assured than if the package were consigned to a person who does not have a direct personal interest in the goods.

The parcel post policy does not cover packages that bear labels on the outside tending to describe the nature of the contents. Theft or pilferage is much more likely when the contents are described and the thief knows in advance what is inside. This exclusion must be omitted when the goods shipped by a policyholder are of such a nature that the postal regulations require disclosure of the contents. An example would be the shipping of books, on which a special postage rate is allowed when they are so marked.

Packages must bear the notation "Return Postage Guaranteed."

Only first class mail is forwarded or returned without additional charge. All other classes, including parcel post, are disposed of by the Post Office if forwarding or return postage is not provided or guaranteed.

The policy also contains a war exclusion clause similar to that found in other transit policies, but special significance may be attached to the portion of this clause referring to "confiscation by order of any government, public authority, or risks of contraband or illegal transportation or trade." It would be contrary to public policy[4] to insure illegal operations involving the risks of contraband or illegal trade, and it would be extremely hazardous to the insurance company.

It is warranted or agreed in the policy that all packages will be mailed in strict accordance with the General Parcel Post Act of the United States, Act of August 24, 1912, and amendments thereto, and shall comply with the regulations of the parcel post system as prescribed by the Postmaster General. The obvious reason for this provision is to prevent loss or damage as a result of packages' being improperly mailed. Merchandise of a hazardous nature, such as flammable materials, may not be shipped through the mails, and an insurance company could not afford to insure such shipments.

The limits of liability are specially designed to fit the needs of parcel post coverage. For ordinary parcel post or unregistered mail, the limit of liability is $100 per package. For registered mail or government-insured parcel post, the limit of liability is $500 per package. In connection with government-insured parcel post, it is required by the policy that each package valued at $100 or less be insured by the Post Office for at least fifty per cent of its actual value and that packages valued at more than $100 be government-insured for at least $50. There also is an "actual cash value" clause limiting the recovery to the actual value of the property lost or damaged, and the insurance company has the option of replacing the lost or damaged articles. In rare cases a higher limit might be included for parcel post packages that exceed $500 in value. The Post Office will insure only to $200.

There is an "other insurance" clause providing that the company shall not be liable for loss or damage to property covered by other

[4] "Public policy," a common legal term, is defined as the policy recognized or established by the state in determining what acts are unlawful as being injurious to the public or contrary to the public good.

insurance, but this is worded so that government insurance is not considered to be other insurance.

Proof of loss is required to be made within four months of the date of mailing, and notice of loss must be given to the insurance company immediately after the loss has become known. The original wrapper must be secured and submitted to the insurance company if it is available, and the receipt for government insurance must accompany the proof of loss papers. Loss is payable within thirty days after receipt of the proof of loss. The insurance company receives by subrogation any rights of the assured to recover the loss from others, but, as pointed out above, this right is of little value except when there is government insurance or when the loss was caused by a third party and not by the Post Office Department.

The postal regulations provide for C.O.D. (cash on delivery) shipments. The charge for such shipments includes government insurance up to the amount to be collected from the consignee. Therefore, there is no reason to insure such packages under a parcel post insurance policy unless the actual value of the package is greater than the C.O.D. amount. In such cases the excess above the C.O.D. amount may be insured. Otherwise, C.O.D. shipments should be excluded from coverage under the policy.

Foreign shipments. Policies may be endorsed to cover foreign shipments (those outside the continental United States, Canada, or Alaska), or a separate policy may be issued. The general provisions of such a policy are the same as for domestic shipments, but there are a few important restrictions. Packages to be insured must be addressed to a country to which United States parcel post service is maintained. The parcel post service to foreign countries changes from time to time according to international conditions.

A second restriction on foreign shipments relates to the insuring of parcels. Insured or registered mail service is maintained to some foreign countries, but ordinary parcel post service is the only kind available to others. Wherever registered or insured parcel post service is available, the parcels must be registered or partially insured by government insurance and a return receipt must be requested. If the only service available is ordinary parcel post, the shipper must obtain a certificate of mailing from the Post Office when the package is mailed.

Occasionally there will be a request for a trip parcel post policy to cover the shipment of a single package or group of packages.

The premiums on domestic shipments are so small that this is seldom justified in this country, but there are occasions when a trip policy is justified on a foreign shipment. The conditions would be the same as for any other parcel post policy except that the individual shipment would be described in the policy in much the same manner as a shipment would be described under a trip transit policy.

Coupon form. The coupon form of parcel post policy is sold to policyholders whose parcel post shipments are modest in amount. Many companies make the break between the coupon and open types of policies at $25,000 worth of merchandise shipped in a year, approximately the amount that would produce an annual premium of $50.

The coupon form of parcel post policy consists of a master policy and a book of certificates (coupons). The master policy contains the coverage provisions and usually specifies a term of one year. The book of certificates is numbered to correspond to the master policy and contains 100, 200, 500, or 1,000 certificates. Each certificate is worth five cents, and the amount paid for the policy and book depends on the number of certificates (that is, $5.00 for a book of 100, $10 for a book of 200, and so on).

Whenever a package is to be shipped and insured, the policyholder tears off one or more certificates, depending on the value to be insured, and places them in the package or attaches them to the invoice for the merchandise. On the stub from which each certificate is detached the following information must be inserted:

1. Name and address appearing on the package.
2. Value of the property in the package.
3. Description of the property.
4. Date mailed.
5. Class of mail, whether government-insured, and, if so, for how much.

If a book of certificates is used up within a year, a new book is issued along with an endorsement extending the master policy for a year from the date of the endorsement. If the book is not used up at the end of a year, the master policy may be extended by endorsement for another year.

The rates vary from one coupon (five cents) for a valuation of $25 or less to five coupons for a valuation of from $50 to $100 shipped by ordinary parcel post. Packages shipped by government-insured parcel post may be covered up to a value of $500.

The rates for government-insured parcels range from one coupon for a valuation of $50 or less to eight coupons for a valuation of from $250 to $500.

This method provides the assured with a complete record of all shipments in such a form that the insurance company can check them conveniently. The government insurance receipt is kept with the coupon stub for the shipment. No reports are made to the insurance company except when reporting a loss or when asking for an additional book of coupons.

A policyholder may wish to insure shipments between his branch locations. The best way to do this is to provide each branch with a coupon book. This allows a separate record to be kept of shipments from each branch, but a single master policy may be issued for the entire set of coupon books.

Open form. The open form is used when shipments are extensive. It is less cumbersome than the coupon form and allows the insurance company to give credit for a good experience and expert handling of shipments. The policy is much the same as the master form issued in connection with the coupon form except that it makes reference to a record book in which all shipments are entered and to the payment of premium as it is earned.

The record book is furnished with the policy. In it is entered the same information as that prescribed for the stub in the coupon book. This must be entered for each package before it leaves the assured's premises for the Post Office. At the end of each month, the total value of the shipments is added up and reported to the insurance company. There is usually a minimum premium of $50 paid at the inception of the policy, and the monthly premiums are charged against this minimum premium. When the minimum premium is used up, the policyholder is required to send the additional premium with the report of values each month. Payment of premium may be required monthly, quarterly, or annually, depending on the volume of business expected under the policy.

The rate for an open form parcel post policy is calculated according to the type of merchandise shipped, the average distance packages are sent, the loss record, and the experience of the assured in mailing merchandise. The rates usually are less than those that apply for the coupon form and may be from fifteen to thirty-five cents per $100 of value shipped.

There is usually some saving over the coupon form even if the

rates are the same. Under the open form the premium is based on the actual value shipped, whereas the coupon form provides for coupons to be used in brackets. For example, a $20 shipment would cost only four cents under the open form at a twenty-cent rate, whereas it would cost five cents under the coupon form because it would be necessary to use one entire coupon. This saving of a cent or two per package becomes important when the policyholder ships thousands of packages each year.

Incoming and returned shipments may be covered under the open form by adding a special endorsement to the policy. Under the endorsement, shipments made by the assured are covered from the time they are placed in the custody of the Post Office and until delivered or returned. It also covers incoming shipments which the assured owns or has purchased or in which he has an insurable interest. The assured is required to keep a record of the shipments received, with information similar to that required for outgoing shipments. The rate for incoming shipments may be the same as that for outgoing shipments or it may be different, depending upon the type of merchandise received, how it is shipped, and the distance over which it has to travel.

Insurance companies usually require that an additional minimum premium be charged whenever the incoming shipments endorsement is added to the policy. This is one of the few cases in which there is provision for two minimum premiums on the same policy. This second minimum premium is usually $5.00 and must be paid regardless of the size of the premium on outgoing shipments. The monthly premium on incoming shipments is charged against the minimum premium, and the additional premium must be paid when the minimum is exhausted.

The open form may be endorsed to cover only shipments that are insured by government insurance or sent by registered mail. This is done frequently in connection with valuable merchandise when there is need for the receipt given on all government-insured mail. The government insurance in such cases would be an agreed amount (less than the actual value) or perhaps a proportion of the actual value.

Loss prevention service on parcel post policies. A parcel post policy usually needs servicing by the insurance company or agent. Large accounts may have expertly managed traffic departments that know how to ship packages properly. The smaller accounts

are likely to be plagued by frequent losses, the causes of which may be improper wrapping and addressing. Parcel post is necessarily subject to rough handling at times, and all packages must be securely tied and wrapped. An effective way to check the effectiveness of the wrapping is to hurl the package across a room so that it lands on a corner, to see if the wrapping breaks. This is not to say that Post Office employees indulge in such actions, but huge stacks of mail subject the packages underneath to tremendous pressure.

Labels should be typed and not written by hand. State names should be spelled out in full because many of the abbreviations are similar. Labels must not indicate the nature of the merchandise, even by indirection. Sometimes it is advisable to show a return address by some name other than the full name of the shipper if the name discloses the nature of the contents. Postal authorities are glad to work with the assured or his representative in devising means to cut down losses.

Many times the source of dishonest losses will be found within the assured's own organization and not within the Post Office. The parcels may never have been mailed. When this is suspected, it may be required that a receipt for mailing be obtained from the Post Office in connection with packages sent by ordinary parcel post. A test check by this method for a period of time may indicate whether losses are occurring in the Post Office or before the parcels reach it.

When losses are frequent, the loss records should be examined to see whether the losses form any pattern. It may be that many losses will show up on packages from a certain branch of the assured's business. This may indicate carelessness or dishonesty on the part of the assured's personnel, or it may show trouble in the Post Office in that city. In other cases there may be losses over a certain postal route. The Post Office inspectors will be helpful whenever there is any indication that the fault may lie within the Post Office.

Registered Mail

Registered mail insurance is designed to indemnify for loss of property with a relatively high value. Financial institutions such as banks and investment houses must settle their accounts by sending large amounts of money and securities from city to city.

These are sent by registered mail or express, but the maximum amount recoverable from the Post Office is $1,000 per package. Express shipments of valuable articles may be declared for their full value, but the cost of the extra valuation is higher than the rates usually charged by insurance companies. The $1,000 limit of recovery on registered mail shipments and the charges of the express companies make it desirable for financial institutions to insure their valuable shipments under insurance policies.

The types of property eligible for registered mail coverage are:

1. Bonds, coupons, stock certificates, and other securities; postage and revenue stamps; postal, express, and other money orders; certificates of deposit, checks, drafts, notes, bills of lading, warehouse receipts, and other commercial papers, and other documents and papers of value;
2. Bullion, platinum, and other precious metals;
3. Currency (whether coin or paper), jewelry, watches, necklaces, bracelets, gems, and precious and semiprecious stones.

Policies will be issued only to persons, firms, or corporations of a fiduciary character, such as banks, trust companies, insurance companies, security brokers, and investment houses. The property covered may be that owned by the assured or it may be the property of others. Valuable articles that banks and investment houses make it a practice to ship for their customers may be insured under the policy of the bank or investment house. Incoming as well as outgoing shipments may be covered. Shipments must be declared to the insurance company or be entered on the record prior to shipment, in accordance with the requirements of the particular policy.

A peculiarity of registered mail insurance is the extremely high values that may be covered. Many insurance companies have arrangements for automatic protection up to $5,000,000, and amounts in excess of that may be covered on special notice to the company prior to shipment. The chances of catastrophic loss are obvious, especially when it is realized that shipments may be sent by registered air mail or by air express. Such shipments are a great temptation to thieves, who may lay elaborate plans to steal a million dollars' worth of currency or securities. Policies frequently provide for limits of $5,000,000 to any one addressee in

any one day, and $250,000 in one package in the case of currency and jewelry.

The coverage is among the broadest found in any inland marine policy. Policies may cover within the continental United States (excluding Alaska), or they may cover within the continent of North America and between places on the continent of North America and any place in the world. Coverage is effective from the time the property leaves the premises of the assured until it is delivered to the addressee or, if returned, until the property reaches the assured's premises again. The policy covers not only while the property is in the custody of the Post Office or the express company but also while in the hands of a messenger or on a conveyance on the way to and from the Post Office or express company at the place of shipment and delivery. This differs from the parcel post policy, which does not cover until the property is in the custody of the Post Office.

The registered mail policy insures against "all risks" of physical loss or damage or destruction of the property, subject to only two exclusions. These exclusions relate to war damage and to loss or damage resulting from civil war or the risks of piracy, contraband, or illegal transportation or trade and seizure or destruction under quarantine or customs regulations.

An excess insurance clause applies to theft by employees of the sender or addressee. If the theft is covered by other insurance, the registered mail policy becomes excess insurance as far as such loss or damage is concerned. However, if the loss is paid under a blanket or fidelity bond, the registered mail policy will pay the amount of premium experience credit that would have been earned under the bond if the loss had not been paid by the bond.

Another peculiarity of registered mail policies is that they may be issued for an amount in excess of the value of the property at the time the coverage becomes effective. This is done so that the policyholder will be reimbursed for any increase in value between the time the property is lost and payment of the claim. Such an increase in value might occur in connection with a loss of stocks when the price of the stocks rose in the interim. This additional value usually is limited to a percentage of the value at the time the coverage becomes effective. The standard additional amount allowable is five per cent.

Policies provide that the assured shall endeavor to have the

contents of each package verified by two people. Losses are payable within seven days after receipt of proof of loss. This is an unusually short period of time compared to that provided for in other insurance policies, but it is necessary in connection with financial transactions. The thirty or sixty days provided for payment of loss under other insurance policies would result in a heavy loss of interest in the case of security losses.

Registered mail policies usually are continuous, and reports of business are made to the insurance company on a daily, monthly, or annual basis, depending upon the amount of value shipped during the year. The recording of shipments and payment of premium are handled in much the same way as those for parcel post shipments. Individual trip policies can be written, but individuals who have valuables to be shipped usually find it more convenient to have a bank or security house ship them and insure them under its open policy.

Negotiable securities, currency, and other negotiable property are insured for their full value. Nonnegotiable property may be insured for an amount sufficient to secure the reissue of the securities or the replacement of other property. The posting of a bond is usually required for the reissuing of securities, and the policy pays for this bond and any other expenses. Nonnegotiable securities usually are insured for from ten to thirty per cent of their value, depending upon anticipated cost of replacement and on possible increases in value. Bonds usually are insured for ten per cent of their value. The rates are reduced materially if nonnegotiable securities are insured for their full value.

Rates for registered mail insurance vary from four to forty cents per $1,000 of value, depending on the distance property is shipped, whether it is shipped by surface carrier or by air, and whether reports are made daily, monthly, or annually. These low rates for shipments of such tremendous value are a tribute to the efficient methods of the Post Office and the express companies in protecting shipments of valuable property.

Armored Car and Messenger Insurance

During recent years there has been an increased use of armored cars for the delivery of money and securities, particularly if the distance to be traveled is not great. There also are occasions when banks and investment houses have need to transfer valuables by

messenger, either armed or unarmed, depending on the value of the property. These are similar to the situations covered under registered mail policies, but armored car and messenger service may be more convenient for short hauls. Such service is used extensively for the transfer of funds within a city and for the delivery of payrolls to large industrial concerns. Another factor that has encouraged the use of armored car and messenger service is the addition of surcharges to the registered mail rates of the Post Office when the declared value of the property exceeds that for which a registry charge is paid. This practice was established by the Post Office in 1932.

The coverage under an armored car or messenger insurance policy usually is the same as that under a registered mail policy, but there are different limits of liability to fit the circumstances of such shipments. The top limit without special notice to the company may be as high as $5,000,000 on securities other than coin and paper money when the property is carried by armored motor cars or in the custody of messengers under the protection of armed guards. If similar property (not coin or paper money) is transferred by messenger not under the protection of armed guards, the limit is likely to be $250,000.

The usual limits on coin and paper money are $1,000,000 when carried by armored motor car, $250,000 when carried by messenger under the protection of more than one armed guard, and $100,000 when carried by messenger under the protection of an armed guard.

If without notifying the company in advance the assured makes a shipment the value of which exceeds the limits of the policy, the company is not liable for any portion of a loss that might occur. This provision of the policy is considered necessary because the larger a shipment is, the greater is the temptation to a thief. The policyholder must be careful to keep his shipments within the policy limits or notify the company of any excess before the shipment is made.

Armored car and messenger insurance may be written in a separate policy or it may be added by endorsement to a registered mail policy. Rates are based on the hazard of the assured's operations and apply to each $100 of value shipped. When paper money is shipped by aircraft in the custody of a messenger, it is customary to charge an extra rate. Shipments must be reported

to the insurance company just as in the case of registered mail policies, and premium must be paid thereon.

It is possible to issue a trip policy either to cover an unusual shipment or for a person or firm that infrequently ships valuables by armored car or messenger. This sort of policy is used at times to cover securities and money when a financial institution is moving to a new location.

Frequently it will be found that a financial institution will have a banker's blanket bond that gives protection on shipments by armored car or messenger. However, the institution may need protection for armored car and messenger shipments in excess of that provided by the blanket bond. An armored car and messenger policy may be written on a deductible basis, the deductible being the amount of the blanket bond. The deductible would ordinarily be something in excess of $100,000. The same thing may be done if the primary insurance is a messenger robbery policy. The premium for such a policy usually is on a flat basis and depends upon the hazards of the operation, the amount of the primary coverage, and the amount of property shipped during the year.

Armored car and messenger policies are tailored to fit the individual needs of the policyholders, and seldom will two policies read exactly alike. For example, when a bank has a contract to deliver payrolls to its clients, it needs protection to the plant of the consignee. In other cases, the armored car company may take the responsibility for delivery and carry insurance on the shipments, and the bank's policy may cover only to the point at which the armored car company's responsibility begins. Banks with branches need protection for funds being transferred between the branches and the main bank. Security houses need messengers to deliver securities to their clients. The variations are endless, and the inland marine underwriter must know the intricacies of his prospect's business in order to prepare a policy giving complete protection.

Questions

1. What are the three purposes served by a transit insurance policy?
2. Why has it not been feasible to standardize transit insurance coverage and rates?
3. What important difference is there between the underwriting of a

transit policy covering goods shipped by common carrier and one covering goods shipped on the assured's trucks?

4. What two limits of liability frequently appear in transit policies?

5. Explain the significance of the provision that the insurance "shall not inure directly or indirectly to the benefit of any carrier or other bailee."

6. Upon what are the premiums for annual transit insurance policies usually based?

7. Name some important variations of the annual transit form of coverage.

8. Under what circumstances is it to the policyholder's advantage to buy a contingent transit policy?

9. Under what circumstances is a trip transit policy issued to an assured?

10. What is the difference between the liability of a common carrier and the liability of the Post Office department for goods in their custody?

11. Explain the differences between the coupon form and the open form of parcel post insurance.

12. What types of insurance coverage are available to protect valuable shipments of currency, securities, and jewelry?

CHAPTER VIII

Motor Truck Cargo Insurance

Motor Common Carriers

Early motor carrier operations. Following World War I and in the 1920's, the motor truck was used to an increasing extent for hauling merchandise. The building of good cross-country highways permitted the motor truck to extend its operations between cities.

It soon became evident that the motor truck had certain advantages over the railroads in the carrying of less-than-carload lots of freight between nearby cities. The shipper by railroad had to arrange for delivery of his goods to the railroad freight house, and the consignee had to pick up the shipment at the freight house on his end of the trip. The time for a fifty- or one-hundred-mile trip might be three or four days by railroad. The motor truck could pick up the goods at the shipper's place of business and deliver it the next morning at the consignee's location.

For several years the railroads seemed to make little effort to keep freight business from going over to the motor truck. Many railroad representatives have held that the railroads lose money on short haul, less-than-carload lots of freight. It is contended that the handling costs on short haul freight traffic are greater than the revenue and that railroads carry short haul freight as an accommodation. Consequently some railroad representatives considered it a small loss when trucks began to carry intercity freight between nearby cities. This viewpoint changed, however, when the development of highways permitted trucks to make overnight and door-to-door deliveries between cities several hundred miles apart. Railroad spokesmen began to contend that truck freight rates should be regulated and that motor truck operation should be subject to the same sort of regulation as that to which the railroads were subject.

Motor truck operation prior to 1935 was largely unregulated and in places was a haphazard business. Anyone could set himself up

in business as a trucker by the purchase of a secondhand truck. In many cities it became the custom for these truckers to park at a stand in the industrial or commercial neighborhoods and for businessmen to send their messengers or handy men over to the stand when they had goods to be transported. In other cases the trucker would arrange for his garagekeeper or his landlady to receive telephone calls for him. The financial responsibility of truckers oftentimes was questionable, and only a small proportion carried insurance to indemnify themselves and their clients for loss of cargoes.

Motor carrier liability. A truckman, the nature of whose operations put him into the classification of a common carrier, was subject to the same broad liability under the common law as that applying to other common carriers. He was responsible for the safe conduct of his cargo except for damages resulting from the rare occurrences for which common carriers are not liable.

Three difficulties arose in the application of common carrier liability to motor carrier operations.

First was the irresponsible nature of some truckers' operations. They refused or were unable to pay for lost or damaged cargo. If the pressure for payment became too great, it always was possible for them to move their truck or trucks to another city and to start in business anew. If a shipper's claim for damage was small, it would not be worth while for him to pursue the trucker to enforce the claim. The trucker's assets frequently were insufficient to pay a large claim.

A second problem arose because many truckers put clauses limiting their liability into their bills of lading or receipts for cargo. They followed the example set by the railroads in the days before railroad common carrier liability was defined by law, and they attempted to limit their liability to nominal amounts. Shipping receipts and bills of lading would contain statements to the effect that liability was limited to $50 per shipment, or to some other nominal figure. There was no uniformity in the shipping receipts used; in many cases the only receipt a shipper received was the truckman's signature on the shipper's memorandum of shipment. Neither party had a clear definition of the truckman's liability.

The third difficulty was the uncertainty whether a particular truckman was a common carrier or a private carrier. Under the

situation existing before the passage by Congress of the Motor Carrier Act of 1935, a private carrier usually was considered to be any truckman who hauled goods under a private contract with a shipper, as contrasted to one who held himself open to employment by the general public. Under the definitions in the Motor Carrier Act of 1935, however, the trucker who hauls under contract is called a "contract carrier," whereas a "private carrier" is defined as one who carries his own goods or goods for which he is the lessee or bailee. The definitions of contract carrier and private carrier as contained in the Motor Carrier Act of 1935 will be followed in this discussion.

The liability of a contract carrier ordinarily is less than the liability of a common carrier and is limited to the liability agreed to in the contract and to any loss resulting from negligence on the part of the carrier. The early contracts with motor carriers seldom imposed any liability upon the carrier, with the result that most contract carriers considered themselves liable only for negligence. This would not have been so difficult a situation had all shippers known clearly what the responsibility of their truckers would be in case of loss. Unfortunately, a trucker might operate as a common carrier and then claim that, in regard to a particular shipment, he was a contract carrier and liable only for negligence.[1]

Federal regulation of interstate motor carriers. By the early 1930's it was becoming increasingly clear that interstate motor truck carrier operations should be regulated. Several states had passed laws relating to motor truck carrier operation within their borders, and in 1935 Congress passed the Motor Carrier Act as an amendment to the Interstate Commerce Act. Its provisions affect all interstate commerce by motor carrier and have a profound influence on the insurance of motor truck cargo risks.

Similar laws relating to intrastate motor truck operations are in effect in most of the states. The discussion here will be limited to the effect of the federal act. The state laws regulate intrastate

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[1] An example of such a case is Stevenson & Co. v. Hartman, 231 N. Y. 378, 132 N. E. 121 (1921), in which a truckman licensed as a public cartman under a New York City ordinance attempted to avoid liability by claiming he was a contract carrier. In that case the court decided that he held his services out to the general public and that he was a common carrier. See also S. Naitove & Co. v. Davis, 273 App. Div. 368, 77 N. Y. S. (2d) 330 (1948), for a more recent case in which a carrier contended he ceased to be a common carrier because he had made arrangements to handle all the shipper's deliveries on a flat fee basis. The court held otherwise and ruled he was still liable as a common carrier.

commerce to a similar extent. The specific provisions of a particular state law should be consulted by the underwriter when he has occasion to insure a trucker with intrastate operations.

Administration of the Motor Carrier Act is by the Bureau of Motor Carriers of the Interstate Commerce Commission. The Act applies to the carrying of passengers for hire as well as to cargo hauling, but attention will be given here only to those sections that affect the insuring of motor truck cargo. Exempt from the Act are farm vehicles, vehicles operated by certain agricultural coöperative associations, haulers of livestock and agricultural commodities (not including manufactured products thereof, and provided the vehicles are not used to carry other products for hire), and vehicles used exclusively for the distribution of newspapers. Provision also is made for the exemption of local interstate hauling where a municipality or commercial zone is cut by state lines.

The Act gives authority to the Interstate Commerce Commission to grant a certificate for interstate hauling to an applicant "if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this part and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity. . . ." This provision prevents a trucker's starting a new service at will. It requires that he establish the need for the service and that he demonstrate his ability to perform the service before a certificate is granted.

The Act contains a "grandfather" clause which provides that any carrier in bona fide operation when the Act became effective would be issued a certificate, upon application, without further proof of public convenience and necessity. This permitted established carriers to continue operating without the necessity of going through the formality of proving that their service was needed. They are protected from competition from new carriers in their territories unless the public convenience and necessity requires additional service. This limiting of new carriers has had a stabilizing influence upon the motor carrier industry.

Another provision of the Act requires that motor carriers set up tariffs and that all charges be made according to the filed tariffs.[2]

[2] Motor truck cargo tariffs are filed with and approved by the Interstate Commerce Commission.

This ended the highly competitive rates prevalent before passage of the Act and permitted the carriers to establish rates on a basis of cost and service.

An important section of the Act, from the standpoint of the insurance companies, is that relating to safety of operation and hours of driving. The Interstate Commerce Commission is given authority to establish reasonable requirements to promote safety of operation and to prescribe qualifications of employees, maximum hours of service of employees, and standards of equipment. The Bureau of Motor Carriers of the Interstate Commerce Commission has worked in coöperation with the motor carrier industry and with the insurance companies in setting up standards of safety and has done an excellent job of promoting safety.

The Act made applicable to motor common carriers the provisions of the Interstate Commerce Act in regard to liability of common carriers. Motor common carriers have the same responsibility as the railroads for safe delivery of their cargoes.

Under the Act, motor carriers are permitted to limit their liability for loss or damage if a lower rate is charged for hauling goods upon which the liability is limited. The motor carriers have not availed themselves of this right to so great an extent as the railroads. As a result, much of the cargo hauled by truckers must be paid for in full if it is lost or damaged. This is desirable from the standpoint of the insurance company insuring the owner of goods being hauled by a motor common carrier, but it increases the potential liability of the insurance company insuring the trucker.

Provisions regarding insurance in the Motor Carrier Act. One of the most important provisions of the Act from the standpoint of the insurance companies is the section relating to "security for the protection of the public." This provides that the Commission may require insurance policies or other evidence of security to make certain that a trucker will meet his obligations to the public. Under this authority, the Commission requires that each trucker provide insurance of $1,000 for loss or damage to the contents of any one vehicle and $2,000 for aggregate losses or damages at any one time and place. (Self-insurance may be permitted if the financial stability of the carrier warrants such permission.)

Insurance policies issued to interstate motor common carriers must contain an endorsement prescribed by the Commission. The effect of this endorsement will be discussed later. The Commission

must be provided with a certificate of insurance indicating that a policy has been issued, and the insurance company must be licensed to operate in all states in which the motor carrier has authority to operate.

If an insurance company wishes to insure a motor carrier that operates in a state in which the insurance company is not licensed, the insurance company may arrange with another insurance company to cover the operations in that state. The other insurance company then issues an insurance certificate to the Commission covering operations of the assured in that state. Under such an arrangement, the original insurance company usually takes care of all losses. The only charge made by the second company is a policywriting fee, because the arrangement does not make it actually liable for any losses.

Thirty days' notice must be given to the Commission when an insurance company wishes to cancel a policy covering a motor carrier for which it has filed an insurance certificate with the Commission. This does not prevent the company's cancelling the coverage to the policyholder within the usual five days provided for by insurance contracts, but the Commission endorsement would remain in effect until the end of thirty days after notice has been given to the Commission. If a policy is cancelled and the insurance is rewritten in another insurance company, it is customary for the succeeding insurance company to assume all liability for the motor carrier from the effective date of the new policy, even though the old Interstate Commerce Commission endorsement liability still has several days to run.

The endorsement that the Commission requires to be attached to all insurance policies covering regulated motor truck common carriers has resulted in the insurance companies' paying large sums in losses for which they would not have been liable under the terms of the policy as issued to the motor carriers. This clause must not be taken lightly, and it is imperative that the underwriter examine with great care the operating methods and the financial stability of every prospective motor carrier policyholder.[3]

Effect of the I.C.C. endorsement. The endorsement the Interstate Commerce Commission requires makes the insurance company responsible for payment of any claim for which the policy-

[3] See Appendix C for the text of the Interstate Commerce Commission endorsement.

holder is liable, up to limits of $1,000 per truck and $2,000 per accident. This responsibility is not limited to the coverage written into the policy but covers the full common carrier liability. This makes the insurance policy an extremely broad "all risks" policy. The insurance company by the terms of the endorsement guarantees payment for every lost package, for every breakage due to carelessness of the carrier's employees, and for infidelity losses resulting from theft by the carrier's employees.

The endorsement includes a reimbursement clause which provides that the assured shall reimburse the insurance company for any loss paid by the insurance company for which the insurance company is not liable to the assured under the terms of the policy. The insurance policy thus is a double contract. It agrees:

1. To indemnify the assured for financial loss as a result of his liability for damage to cargo from the hazards specified in the policy, up to the limit specified in the policy.
2. To pay the carrier's customers for any loss for which the carrier is liable, up to the $1,000 and $2,000 limits. (The insurance company is to be reimbursed by the carrier for this latter payment if the loss is due to a hazard not covered by the policy or if the loss is in excess of the policy's coverage.)

In actual practice, the trucker reports losses to the insurance company only when the loss is covered by the policy itself. The carrier pays his customers directly for other losses. It is seldom that the insurance company pays a loss to a trucker's customer (under the liability imposed by the I.C.C. endorsement) and then secures reimbursement from the policyholder.

The danger to the insurance company in the I.C.C. endorsement arises when the trucker is unable to pay these claims for which he is liable but which are not covered by the insurance policy. A typical example involved an eastern motor carrier a few years ago. The insurance policy covered for reasonable limits of liability, and the experience had been satisfactory. The insurance company had not thought it necessary to make any special check of the carrier's operations so long as the losses did not rise to an unprofitable level.

The carrier got into financial difficulties and eventually ceased operations, filing a bankruptcy petition. Subsequent investigation by the insurance company revealed that it was liable under the I.C.C. endorsement for many thousands of dollars in claims which it never had contemplated and of which it had had no notice.

When the motor carrier began experiencing difficulty in meeting

its bills, it had allowed its customers' claims for damages to go unpaid. These losses were not covered by the insurance policy, and no report of them was made to the insurance company. By the time bankruptcy papers had been filed, there were hundreds of such claims. Since each claim was the result of a separate occurrence, the insurance company was liable for each of them up to the maximum of $1,000 on any one vehicle. There was little hope of reimbursement from the carrier, inasmuch as its assets were insufficient to meet its liabilities.

It is important that the insurance company maintain a check upon the financial responsibility of any motor carrier for which it issues a policy containing the I.C.C. endorsement. An insurance company covering a motor carrier's operation at the time the carrier becomes bankrupt may find itself liable for unpaid claims.

If an insurance company is covering a motor carrier under the I.C.C. endorsement when the carrier becomes bankrupt, it is important to send a company representative to the headquarters of the trucking company at once. Frequently the assured's terminal will contain hundreds or thousands of packages that are part of the overages and shortages of customers' shipments. When labels became displaced and identification was difficult, the packages may have been simply piled in a corner.

In the case of one insolvent trucker, such packages were sold by the receiver for a small fraction of their original value and the proceeds of the sale were used to help pay the general creditors. The insurance company representative arrived on the scene a few days later and found that many of the customers' claims could have been satisfied by identification of the packages. As a result, the insurance company had to pay the claims and received only a small portion in return as one of the general creditors.

It may seem strange at first glance that motor carriers should be required to carry insurance when railroads are not. This situation seems to have developed out of the early history of the two types of carriers. The railroads assumed the responsibility for safe delivery of goods entrusted to their care. It is true that they attempted to limit their liability before it was defined by law, but when liability was proved, the railroads had a record of paying the claims against them. The early record of the trucking industry had examples of truckers' disappearing without paying claims.

A railroad must have extensive physical properties in order to

operate. Truckers, on the other hand, may operate without large investments in physical assets. Shippers (and Congress) did not feel the same assurance that truckers would have sufficient resources to pay all claims. As a matter of fact, there are sufficient cases of insolvency to indicate that it is a reasonable requirement for motor common carriers to carry insurance or otherwise show evidence of financial responsibility as required by the Motor Carrier Act.

Coverage under Motor Truck Cargo Policies

Inland marine insurance for motor carriers differs from the transportation insurance coverages previously discussed. A "truckmen's form" of motor truck cargo insurance policy indemnifies the policyholder (the trucker) for loss or damage resulting from his legal liability as a carrier. It does not insure against loss of the property unless the assured is legally liable for such loss.

For example, suppose a trucker had an insurance policy that insured (among other things) his legal liability for loss of property by flood, but that it is determined that the circumstances under which the flood caused the loss constituted an "act of God." If it is determined that the trucker is not liable for such a loss resulting from an "act of God," the insurance company would not be liable under its policy.

The motor truck cargo policy is issued to cover the single interest of the truckman only and not to include the interest of the shipper, owner, or consignee of the cargo. The only exceptions to this are in connection with household furniture warehousemen and with armored car carriers; both of these cases will be discussed specifically later. Such policies are not written to cover more than one truckman under a single policy and seldom cover the interest of a railroad or other carrier in connection with the operations of the motor carrier.

Since motor truck cargo policies insure the legal liability of the truckman, it would seem logical for such policies to cover all the losses for which the truckman is liable. However, this is seldom the case. Most policies carried by truckmen cover their legal liability for certain specified perils only and do not give complete protection.

This is not so illogical as it appears at first glance. The specified perils enumerated in the policies include most of the accidental

hazards that can cause loss, but the policies do not cover mysterious disappearance, unexplained shortage, or damage to packages because of careless handling. Such losses are primarily the result of poor operating practices on the part of the policyholder. If they were insured, it would remove much of the incentive the trucker has for careful operation. Consequently insurance companies ordinarily insure only against those losses that are not likely to result from carelessness of the assured. When an insurance company occasionally does write an "all risks" policy, there usually is a large deductible clause applying to all losses, and this serves to give the necessary incentive for careful operation.

Trucking companies differ widely in their methods of operation, in the commodities hauled, in the territories served, and in the length of hauls. Insurance policies are designed individually to meet the needs and desires of each trucker. There is no standardization either of rates or of coverage, and the following descriptions must necessarily be general in nature.

It is customary to insert in the policy a description of the goods hauled. In the case of a common carrier hauling all kinds of goods, the description would be "general merchandise." The coverage applies to goods for which the carrier is legally liable as carrier, bailee, or warehouseman under tariff, or bill of lading or shipping receipt issued by the assured. This broad phraseology is used in order to include circumstances in which the trucker would be in the position of a bailee or warehouseman in regard to some particular shipment.

The policy is written to cover only "lawful goods and merchandise," because it is against public policy to insure unlawful goods, and it also is considered poor underwriting practice to insure illegal operations. Such illegal operations would be subject to loss by racketeering or to confiscation by legal authority.

Among the specified perils covered by almost all motor truck cargo policies are the hazards of fire and lightning (including self-ignition or internal explosion of the conveyance), windstorm, and flood. The windstorm coverage frequently is limited by the exclusion of loss or damage caused by rain, hail, sleet, snow, and/or dust, whether driven by wind or not. This exclusion is believed necessary because rain, snow, and dust damage may be caused or contributed to by carelessness on the part of the assured in not keeping the cargo covered.

In spite of the fact that lightning, windstorm, and flood may be considered "acts of God," the carrier still may be held liable for damage therefrom. It is necessary for the carrier to show that he has done everything possible and that the loss was entirely due to the "act of God" if he is to avoid liability for the loss. As a practical matter, insurance companies pay for such losses without much question.

Policies ordinarily cover losses resulting from the stranding, sinking, burning, or collision of a regular ferry, including general average and salvage charges for which the assured is legally liable in respect to the cargo carried. This is one of the few situations in which jettison and resulting general average charges might be applicable under an inland marine policy.

Collision and overturn losses. Collision of the motor vehicle with any other automobile, vehicle, or object is covered. Policies do not always define collision, but differences of opinion concerning just what it means have made it advisable to insert a definition to clarify the underwriter's intentions. A commonly used definition of collision restricts the meaning so that it does not include loss or damage caused "by coming in contact with any portion of the roadbed or by striking the rails or ties of any street, steam or electric railroad, or by coming in contact with any stationary object in backing for loading or unloading purposes, or the coming together of truck and trailer during coupling or uncoupling." It is believed by many writers that such losses are likely to occur only when the trucker is careless in the operation of his vehicles or careless in loading them, and that such carelessness is not properly insurable.

Another difficult problem in connection with collision coverage arises when the cargo extends above or to the side of the transporting vehicle. If the load is in collision with a culvert, overhead bridge, or other object but the vehicle itself does not strike the object, there may be a question whether there is a collision within the meaning of the policy. If the word "collision" were used alone, it would seem that any doubt would be resolved in favor of the assured and the loss would be covered. If the coverage clause refers to "collision of the motor vehicle," it might be contended that the vehicle is not in collision when only the load comes in contact with another object, but it has been held otherwise.[4]

[4] See Bucks County Construction Co. v. Alliance Ins. Co., 162 Pa. Super. 153, 56 A. (2d) 338 (1948), for discussion of case in which a piece of equipment extending beyond the transporting vehicle was damaged by striking a concrete pillar.

It is the intent of many underwriters to have the collision coverage apply only when the vehicle itself is in collision and not when the cargo is so loaded that it overhangs the sides or extends above the top of the vehicle. In order to be entirely clear about the meaning of the term "collision," some underwriters insert in their motor truck cargo policies a further exclusion of "collision of the insured property with another object unless the transporting vehicle is in collision within the meaning of the policy."

Overturning of the motor truck or trailer is another risk that is covered, and like collision it has been interpreted in many ways. The underwriters usually intend "overturning" to mean the upsetting of the vehicle to such an extent that it comes to rest on its side or top. It has been held, however, that when a truck partially tipped over, spilling the contents, but righted itself when the load was removed, there was overturning of the truck within the meaning of a transportation insurance policy on the material, since anything was overturned when it was sufficiently tipped over to spill the contents.[5]

In another case the wheels on the right side of a truck loaded with fruit sank down to the axle in the earthen shoulder of the highway, causing the load to shift its weight and break the sideboards of the truck. Part of the fruit fell to the ground and was damaged. An insurance policy covered the assured's liability as a private or common carrier for loss or damage to goods caused by "Overturning of the motor truck and/or trailer." A court held that the loss was covered, saying: "A slight overturning is as much an overturning as a complete overturning." [6]

A different decision was given in a case in which flaps had been added to a platform trailer in order to increase the width of the platform. The flap on one side broke, allowing the cargo (a large power shovel) to slip to the ground. The majority of the court held that there was no overturning and said:

> It is our view that there was no overturning of the conveyance (the trailer) merely because the flap or added width of the platform broke off on one side, even assuming that the flap was part of the platform and the material of which this flap was constructed did overturn as it fell to the ground. The equilibrium of the conveyance (the trailer) was not disturbed in any way so that it could not be said to have overturned, the accident being due solely to the collapse or breakdown of the flap on the edge of the trailer platform.[7]

[5] Carl Ingalls, Inc. v. Hartford Fire Ins. Co., 31 P. (2d) 414 (Cal. App. 1934).

[6] Moore v. Western Assurance Co. of Toronto, 186 S. C. 260, 195 S. E. 558 (1938).

[7] Orlando v. Manhattan Fire & Marine Ins. Co., 266 App. Div. 319, 42 N. Y. S. (2d) 228 (1943).

There was a dissenting opinion in this case, one justice feeling that there was overturning within the meaning of the policy. It seems clear that any upsetting of the equilibrium of a vehicle to an extent that causes the cargo to be injured would be considered an "overturning" if the word is not defined in the policy. Some underwriters have added to their policies this statement: "Overturning as used herein shall mean the upsetting of the vehicle to such an extent that it comes to rest on its side or top." The intent is to exclude the type of loss that might occur as a result of careless loading of the cargo or that might result from the driver's attempting to negotiate roads not in condition for safe travel.

The collapse of bridges or culverts usually is an insured hazard. Many underwriters feel that they should not be liable for losses when the truckman takes a heavily loaded truck onto a bridge or culvert marked to indicate that the carrying capacity is less than the weight of the truck and its load. These underwriters limit the coverage to "where the total load is not in excess of the indicated carrying capacity of the bridge or culvert." This makes it advisable for the truckman to use care not to load a truck beyond the capacity of bridges on his route.

Theft coverage on motor truck cargoes. Theft insurance in connection with motor truck cargo coverage presents a paradox. It is one of the most frequent and most costly causes of loss, yet it is not included in the basic coverage of many policies. Frequently it is added by endorsement.

It has long been the belief of ocean marine underwriters that theft by stealth is a peril within the control of the assured, although ocean marine policies have covered theft by violence, or by "holdup" as it has become known in this country. Much of this thinking has been carried over into the insuring of cargo on land.

Mysterious disappearance of cargo is a frequent reason for loss at motor truck terminals, and it is responsible for some losses on the road. Some mysterious disappearance losses are due to misdelivery. A great many people will accept packages delivered to them in error and will not make any effort to return them. The driver or dispatcher has little chance to trace the misdelivery once it is out of his hands.

Occasionally packages are lost off the back end of trucks and are picked up and kept by the finders. Sometimes the identifying labels are lost from shipments, and they may be in the terminal

but are not identifiable. These make up the "O., S., and D."s (overages, shortages, and damages) that every trucker attempts to locate and identify. Many inland marine underwriters believe that such losses are not insurable because they can be kept to a minimum by careful operating methods on the part of the trucker.

Theft by employees of the assured, or by outsiders with the collusion of employees, is responsible for many shortages. It is extremely difficult to prove the cause of such shortages; the packages disappear and there is no evidence to show where they went. This, too, is a hazard the assured can control by means of a rigid checking system, and many underwriters do not consider theft by employees as a proper hazard to be covered by a cargo policy. A provision usually appears in the theft endorsement excluding loss caused by infidelity of the assured's employees.

The theft endorsement usually specifies that it covers the theft of entire shipping packages only and does not cover pilferage. "Pilferage" is intended to mean the theft of a part of the contents of a shipping package without the entire package's being taken.

In spite of what appears to be a clearly worded coverage concerning theft, the insurance companies have had numerous claims under the theft coverage in which there was no evidence of what happened to the vanished merchandise. One truckman claimed that any lost package must have been stolen and therefore was a proper theft claim. It was pointed out to him that the package might have been lost off a truck, or misdelivered, or stolen by employees. He then contended that anything lost was eventually stolen if the finder did not return it and that the same thing was true in the case of misdelivered goods. He ignored the fact that, in the case of misdelivery and loss by falling off of the truck, the direct cause of the loss was not theft but misdelivery or loss off the truck. Theft may have occurred subsequently, but the policy insures only direct causes of loss, which in the case of misdelivery and mysterious disappearance are not insured hazards.[8]

In cases of theft by employees, it has been argued by assureds that the bonding company and cargo insurance company should get together and decide which one is to pay the loss. This argument entirely ignores the fact that each insurance policy is a separate

[8] See Savin Express Co. v. Hanover Fire Ins. Co., 132 Conn. 181, 43 A. (2d) 69 (1945), for discussion of a case in which packages were lost and the assured could not prove that a theft had occurred.

contract and that the assured is obligated by each to prove that his loss was covered by one of the perils cited in that policy.

Many underwriters feel that the coverage is clear with respect to the limitations regarding pilferage and theft by employees, as described above, but some underwriters insert an additional clause to prevent misunderstanding on the part of a policyholder who has no legal or insurance training. This additional clause reads: "It is agreed that this policy does not cover misdelivery, mysterious disappearance, or shortage, unless there is reasonable evidence that a theft has occurred."

A clause used to give the assured an incentive to install theft prevention methods is a deductible clause applying to theft losses. The amount of the deductible depends on the nature of the goods carried and the likelihood of package thefts. The minimum is usually $50, but the deductible may be as high as $500 if the assured is interested only in protection from a catastrophe and feels that he can afford to pay the smaller losses himself.

Miscellaneous coverages on motor truck cargoes. Other hazards that may be covered by endorsement are those caused by flood, riot and civil commotion, strikers and locked-out workmen, and explosion. A few insurance companies have been experimenting with broad coverage of the "all risks" type. A wording used occasionally covers losses caused by "external hazards." Some underwriters have used wording similar to that in ocean marine policies and have granted protection against "the perils of transportation."

All of such policies cover mysterious disappearance and non-delivery. The usual method of controlling this hazard under a broad coverage policy is to include a deductible of $500 or more. Whenever a high deductible is used, it is customary for the insurance company to keep a close check on the assured's handling of the losses for which he is liable to his customers. If he allows losses to remain unpaid, it may indicate that the trucker is in financial difficulties. Under the I.C.C. endorsement the insurance company would be responsible for unpaid losses in case the assured became insolvent.

Terminal coverage. The insuring clause of the motor truck cargo form usually covers the legal liability of the assured for loss or damage to goods "when loaded for shipment on and in transit in or on the vehicles owned, operated or hired for or by the named assured. . . ." In the early days of motor truck operations, this

was a satisfactory coverage because the trucker picked up the goods at the shipper's door and delivered them to the consignee's place of business.

The trucking industry became more and more complicated, and truckers established terminals at which goods were sorted by routes and transshipped. A motor common carrier ordinarily is responsible for the safety of goods while they are lying in the terminal in course of transit to the same extent as when they are in the trucks. Most policies now contain an extension of coverage to terminals while the goods are in the custody of the assured and while they are in due course of transit. These extensions of insurance coverage to terminals usually limit the coverage to twenty-four, forty-eight, or seventy-two hours, depending upon the needs of the assured and the length of time the goods are likely to be in a terminal during transfer.

From the insurance company's standpoint, this extension of coverage to terminals is a serious additional hazard. The largest insured motor truck cargo losses have been in terminal fires. The highest value regularly carried in a single motor truck may be somewhere between $30,000 and $50,000, but the concentration of value in a terminal may reach hundreds of thousands of dollars. The fire hazard of each terminal is underwritten with caution, and the insurance company is entitled to a considerable additional premium when the terminal hazard is covered. The published fire insurance rate for contents of the terminal customarily is used as a basis for the additional premium charge.

Limitations on the coverage. Policies almost always show a radius of operations. Experience has shown that the hazard of a motor truck operation increases with the distance traveled by the trucks. Rates are determined upon the basis of the radius of operations from the assured's headquarters as stated in the policy; losses occurring beyond that radius are not intended to be covered.

A local hauler is one that operates within a radius of approximately fifty miles. The hazard presented by this class of trucker usually is considered to be less than that presented by a long-haul trucker.

An intermediate hauler may operate over a radius of 200 miles; his operations are characterized by the fact that the drivers are out and back the same day. It is not necessary for them to drive on night runs or to be away from home overnight. On the longer

hauls of several hundred miles, the drivers must operate at night, and driver fatigue seems to be an important cause of loss. Long-distance operations must carry high value loads to be profitable, and the losses that do occur on these runs are likely to involve large amounts.

A policy may or may not list the trucks covered. On smaller policies it is customary to list the trucks, with a complete identification by motor and serial number. Cargo is covered only while on the described trucks. On larger operations the trucks are not listed, and all operations of the assured are covered, including any with hired trucks used temporarily.

Policies include a limit of liability per truck and a catastrophe limit of liability when more than one truck is involved or when terminal liability is covered. If the trucks are listed specifically in the policy, an amount of liability for each truck is shown.

An important factor in the chance of loss by theft is the type of commodities hauled. Companies often insert a limitation in the policy providing that limited amounts apply to commodities that are especially susceptible to theft. This limitation may be by percentage. For example, a policy may provide that not more than ten per cent of the limit of liability shall apply on the special commodities. The limitation may also be expressed in dollars.

The specially hazardous commodities listed in many policies include butter, oleomargarine, furs, liquors, silks, rayons, woolens, tires, tubes, tobacco products, clothing, and textiles. The rating and the underwriting of motor carriers depend largely upon the type and quantity of merchandise hauled. The desirability of insuring a motor carrier can change materially if it starts to haul larger quantities of the hazardous materials. The limitation is intended to require the assured to notify the insurance company if his operations change.

Limitations also apply to articles that are especially susceptible to breakage. Coverage on eggs is limited by percentage or by a specified amount. Frequently there is no loss payable on eggs unless there is at least fifty per cent breakage in each package for which a loss is claimed. This limitation can be modified when the principal cargo consists of eggs and the rate is commensurate with the hazard.

Losses to paintings and other works of art usually are paid only in case of total loss from a peril insured against. Some policies

contain a dollar or percentage limitation on the amount that will be paid on fine arts losses. Losses payable on livestock are limited to those caused by death from a peril insured against or from destruction made necessary by such a peril.

Exclusions. Many of the exclusions in a motor truck cargo policy are similar to those appearing in other transportation policies. There are exclusions of loss to accounts, bills, currency, evidences of debt, money, securities, and jewelry, and an exclusion of loss resulting from war or hostilities.

Several exclusions are intended to avoid loss due to carelessness on the part of the assured or his employees. One refers specifically to loss or damage caused by neglect of the assured to use all reasonable means to save and preserve the property at and after any disaster insured against. This provision reinforces the terms of the "sue and labor" clause, which forms a part of the basic policy to which the motor truck cargo form frequently is attached.

Other exclusions relate to damage caused by poor packing or rough handling and contact with oil or grease or with another commodity, and to loss due to inherent vice or delay, loss of profit, loss of use, or loss of market.

Specially designed for the motor truck cargo policy are exclusions of loss or damage to the contents of any vehicle owned by the assured and rented to others, and loss or damage to any goods that the assured is carrying gratuitously or as an accommodation.

Freight charges on the goods being hauled usually are excluded except charges which are earned prior to the acceptance of the merchandise and for which the assured is legally liable. Under special circumstances, freight charges earned by the assured up to the time of the accident may be covered by adding a special endorsement to the policy.

Special conditions. Policies usually contain a valuation clause similar to that appearing in other transportation policies. It is customary to include a coinsurance clause requiring full insurance to value. The assured cannot collect a greater proportion of any loss than the amount of insurance on the vehicle involved bears to the amount of property involved in the loss. (For discussion of the application of a coinsurance clause, see Chapter IV.)

An "other insurance" clause usually is attached to the policy in order to make the cargo policy excess over any other coverage.

If individual trucks are listed and specific amounts of insurance

are made to apply to each, the amount of insurance is reduced by any loss that occurs and the amount must be reinstated following payment of the loss. This is not true of the blanket policies in which there is no specific amount of insurance applying to each truck.

Types of Motor Truck Cargo Policies

Reference already has been made to policies that list the trucks specifically and to those that cover all operations of the assured. In the first type of policy, a specific amount of liability is listed for each truck. The amount of the policy is the total of all the amounts of liability applying to the different trucks.

The rate for the policy is multiplied by the policy amount to compute the premium, and the premium for this type of policy usually is paid annually in advance. For example, suppose there were eight trucks listed on the policy, with $1,000 coverage on four of them and $2,000 coverage on the other four. The policy amount would be $12,000. If the rate were $3.00 per $100, the premium would be $360.

The limit of liability payable as a result of any one loss would not necessarily be the same as the policy amount. A lesser limit of liability may be specified. In the example used in the previous paragraph, a limit of liability in any one loss might be set, for example, at $7,500.

The other type of policy is known as the "gross receipts form," because the premium payments are based on the gross receipts of the motor carrier. This form usually covers all the operations of the assured as a trucker, and the individual trucks are not listed. Frequently it is used in insuring the larger truck operations. There would be a great deal of additional work involved in endorsing the insurance policy if it were necessary to issue an endorsement every time a large trucker secured a new truck. The rate is expressed as an amount per $100 of gross receipts. The assured agrees to keep an accurate record of his gross receipts from the trucking business and to pay the premium at the rate given in the policy. Usually the premium payments are made monthly.

The calculation of a rate for a gross receipts method of premium payment is largely a matter of knowing the experience of the motor carrier. The underwriter calculates what premium he needs to cover the expected losses, adds a factor for catastrophe losses,

and applies the total to the expected gross receipts to get the rate.

For example, suppose the trucker had been averaging losses of $10,000 for each of the past three or four years. The underwriter might estimate that this average loss would be likely to continue. He may also consider that every three or four years even a good operator will have at least one total loss from some accidental cause. The underwriter may add about a third of the maximum liability per truck, which may amount to another $10,000. This would make a total loss expectancy of $20,000 per year. For purposes of the illustration, a permissible loss ratio may be taken as fifty per cent. Accordingly, the insurance company would need to receive a total premium of about $40,000 a year. A typical motor carrier would be one with $2,000,000 of gross receipts annually. Since $40,000 is two per cent of $2,000,000, two per cent of the gross receipts would be the rate to be quoted for the policy.

Other factors used in calculating a gross receipts rate include the limits of liability, the nature of the commodities hauled, and the degree of coöperation by the assured. There is no uniformity in method or in the rates that result, because each underwriter has his own experience and judgment to use as a basis for his quotations.

The gross receipts method of payment for motor truck cargo insurance premiums represents one of the few types of cases in which the premium payment may bear little relation to the insurance company's liability. An insurance premium usually is calculated by applying a rate to the amount of the insurance company's liability. For example, a transportation policy premium is based on the total values shipped during the year.

The gross receipts of a motor carrier bear almost no relation to the liability of the insurance company. The trucker's gross receipts depend primarily on the weight and volume of the goods he hauls. Value has only a minor effect. The result is that during a period of rising prices (such as occurred during and following World War II) the losses of insurance companies increase at an astounding rate. The value of an average load of merchandise doubles in a few years' time, and the losses of the companies are made up of the dollar values of these loads. The gross receipts of motor carriers do not increase so rapidly as the values of the loads they haul, and the insurance companies are faced with sharply increased loss ratios.

Many inland marine underwriters feel that the gross receipts

method of premium payment should be regarded merely as a method of distributing premium payments by the month and that it should not be regarded as a method of rating. These underwriters add up the total liability represented by all the trucks insured for a trucker and then calculate the hazards of the operation, applying a rate for the hazards to the amount of liability. This calculation produces an annual premium on much the same basis as that used for the small trucker whose trucks are listed on the policy. This annual premium is divided by the estimated annual gross receipts to get a rate of premium payment. A recalculation of the premium each year in accordance with price trends and the changing hazards of the operation will keep the premium in line with the insurance company's actual exposure to loss.

Motor Truck Cargo Insurance Experience

The insurance company experience with motor truck cargo insurance has been unsatisfactory for many years, and any consideration of the subject must take into account loss prevention measures and the selection of desirable assureds. Among the principal reasons for the unsatisfactory experience are:

1. The trucking industry has been growing so rapidly that it has not been able to become sufficiently stabilized to permit the establishment and maintenance of a proper insurance rate level.
2. The larger motor carriers each pay insurance premiums of several thousands of dollars each year. Insurance agents and companies compete with each other for these premiums, sometimes tending largely to ignore the hazards involved.
3. Insuring motor carriers is essentially a matter of the necessity for paying a few large losses. It takes several years' experience to determine the loss level of an individual motor carrier operation. Insurance companies and truckers have tended to ignore this fact. One or two good years have led truckers to ask for rate reductions. Insurance companies have tended to grant these requests for lower rates, when a longer period of experience might have indicated that the reductions were not justified.

The importance of the insurance problem to the trucking industry can be appraised by considering that almost five per cent of the trucking industry's gross income goes to pay insurance

premiums and that almost half of this amount (about two per cent of the gross income) is used to pay for cargo insurance. Losses grow principally out of collision, fire (both on the road and in terminals), and theft (including loss of valuable loads by robbery and theft of individual shipments by stealth).

Collision losses are preventable (1) through safety programs encouraging better driving, (2) through excellent maintenance to prevent mechanical failure of brakes and other equipment, and (3) through relieving drivers of long runs, so that they do not go to sleep while driving and do not take chances to make a schedule.

Fire following collision frequently is aggravated by burst gasoline tanks. It is a standard recommendation of insurance engineers that all trucks be equipped with "safety" gasoline tanks. These tanks are specially built for truck operation and are made of extra-heavy steel. They also are constructed in such a way that gasoline cannot spill out even if the tank is turned upside down. It is further recommended that all trucks be equipped with overturn switches that automatically cut off the electrical current from the battery if the truck becomes involved in a collision or is overturned.

Many trucks are lost each year as a result of fires that start when truck tires become overheated. Underinflation is the principal cause of tire fires, which are extremely difficult to extinguish. All trucks should carry fire extinguishers. They should also carry flags and flares to be set out to warn other vehicles when it is necessary for a truck to stop on the road.

Terminal fires result in tremendous losses. Preventive measures depend principally upon good housekeeping in terminals and upon the installation of automatic sprinklers and other fire protection devices.

Prevention of theft in the terminals is mainly a matter of having a system of checking goods in and out. If an employee knows that a theft will not be discovered until the consignee reports a shortage in a shipment, he knows that he has several days in which to secrete and dispose of stolen goods. If the packages are checked in and out of each terminal so that a shortage will be discovered immediately, there is much less chance of successful theft.

The best precaution against loss of valuable loads by robbery is the installation upon each truck of an automatic alarm system. These alarms, which are not under the control of the driver, are so

installed that a loud siren begins to sound if the truck is opened. Robbers do not like to take chances with an automatic alarm, and they tend to operate against unprotected trucks.

Robbers are most likely to pick out loads consisting of a single type of merchandise, although mixed loads are not immune. Road patrols by highway police, having the drivers check in with the highway patrol, and the use of more than one driver per truck are other deterrents to robbery. Some state police departments suggest preferred routes for truck operations, along which continuous patrols are maintained.

Progressive truck company management is glad to coöperate with its insurance advisers in the prevention of losses. Such management realizes that any industry must stand on its own record of insurance losses and that eventually it makes its own insurance rate level. Some truckers have been able to cut their losses to such a point that their cargo insurance cost is less than one per cent of their operating costs, whereas others are paying three per cent or more for cargo insurance. The difference between these figures could mean the difference between success or failure for a trucker.

Special Motor Truck Cargo Coverages

Household furniture movers. It has been pointed out that, with few exceptions, motor truck cargo policies do not include protection for any interest other than that of the trucker, and only for his legal liability. One of the exceptions to this general practice is in connection with household furniture moving.

Such movers carry the usual type of motor truck cargo policy protecting themselves against loss because of their legal liability for loss, but many insurance companies also arrange with household furniture movers to issue certificates of insurance to the people whose furniture they carry. These certificates provide the owner with an "all risks" type of insurance coverage and cover for whatever value the owner wishes to place upon the shipment.

The released valuation for which the household furniture mover is legally liable under the usual bill of lading is fifty cents per pound. This is not adequate to cover the value of good furniture. The certificate of insurance is desirable for the owner of the furniture because he gets more nearly complete protection for his property. It is a desirable arrangement for the trucker because the insurance company pays the shipper for some handling losses of

the type not covered by his legal liability policy. The certificate is really a trip transit policy issued in connection with the legal liability policy carried by the trucker.

Armored car operator's coverage. The other instance in which a trucker may secure insurance on the interest of another party is in connection with armored cars. An armored car company frequently makes a contract with a bank or other financial institution to deliver money or securities. If the shipper or consignee does not carry an armored car insurance policy, the company may desire to protect its customer, not only for losses for which it is legally liable but also for any loss that may occur. These policies cover in much the same manner as the armored car policy and give almost full protection.

Consolidation of motor truck shipments. Freight brokers and consolidators perform much the same service in the motor truck field that the carloading company performs in the railroad freight field. Some of these concerns qualify as common carriers, and their legal liability may be covered in the same way as that of a trucker. Each case would be rated individually. The policy would be arranged to fit (1) the terminal hazards of the assured's operation, (2) whether any actual trucking is done, and (3) the contracts with other truckers. Many of these consolidating operations are really local truckers and would be treated in the same way as other local trucking risks.

Contract carriers. The discussion up to this point has been confined to those truckers defined under the Motor Carrier Act as common carriers. The Act defines a "contract carrier by motor vehicle" as a person not defined as a common carrier who "under special and individual contracts or agreements, and whether directly or by lease or by any other arrangement, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation."

The contract carrier effects agreements or contracts with people who have hauling to be done. He deals with a limited number of people and operates under the terms of his agreements with them. He does not hold himself out to the general public as being in a position to haul for them.

The contract carrier has certain operating advantages over the common carrier. He can arrange for full loads and can set up his schedules on an economical basis. The common carrier, on the

contrary, must maintain a regularity of service even though this forces him to operate at times with partial loads. Many truckers try to operate as contract carriers so that they can pick and choose the more profitable contracts and not be obligated to take the general hauling required of a common carrier.

The Interstate Commerce Commission has spent much time in deciding whether individual motor carriers are common or contract carriers under the Motor Carrier Act. From the standpoint of the insurance company in underwriting a trucking risk, the intricacies of why a trucker is a common or contract carrier are mainly of academic interest. It is important, however, to know what class of carrier the Interstate Commerce Commission has determined him to be and what effect this has on his liability to his clients.

The liability of the common carrier has been discussed fully. The essential difference between the liability of the common carrier and that of a contract carrier is that the contract carrier is liable only for losses due to his negligence. He does not have the responsibility of the common carrier unless he has agreed by contract to accept such liability. Therefore, an insurance policy covering the legal liability of a contract carrier may involve a much more restricted liability than one covering a common carrier. The liability is similar to bailee liability, which will be discussed at length in Chapter XIII.

There are some variations of this rule that must be investigated in connection with each trucker insured. The contract carrier can assume extra liability under his contract. He may assume the liability of a common carrier or he may agree to keep the cargo insured. In fact, there is almost no limit to the liability a contract carrier can assume. It is customary for an insurance company to determine the terms of the hauling contracts entered into by any assured who claims to be a contract carrier and eligible for preferential rate treatment on that ground. Contracts are required to be filed with the Interstate Commerce Commission and may be examined in its offices if it should become necessary to examine a contract without the coöperation of an assured or prospect.

It must be recognized that the mere existence of a contract between the trucker and the shipper does not make the trucker a contract carrier. Many common carriers have contracts with people for whom they do a considerable amount of hauling in addition to their work for the general public. These contracts may

be a part of their common carrier arrangements and may not change their status at all. The status as determined by the I.C.C. must be established in each case that raises a difficulty.

Owner's goods on owner's trucks (private carriers). The third type of carrier defined in the Motor Carrier Act is the "private carrier of property by motor vehicle," which means a person who is not defined as a common or contract carrier and who transports property of which he is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in the furtherance of any commercial enterprise. Private carriers are subject to the safety regulations of the Interstate Commerce Commission. These specify the qualifications and maximum hours of service for employees and standards of equipment.

These private carriers are known in the insurance field as truckers carrying owner's goods on owner's trucks.

The insurance policy on property being carried by the owner is a direct damage policy and is not a legal liability policy. If the property is damaged or lost as a result of one of the insured perils, the loss must be paid by the insurance company. There is no possibility of avoiding loss payment on the ground that the trucker is not liable for the loss. There is not even the remote possibility of the loss's being the result of an "act of God" and not payable on that ground. The policy must be underwritten on the basis of the commodity hauled and the full hazards assumed by the policy.

It might be expected that experience with private carriers would be worse because of the insurance company's more extensive liability. This is not the case. The average experience with private carriers is better than that with common and contract carriers. There appear to be several reasons for this. Many private carriers do not operate over such long routes as common or contract carriers; their operations are more likely to be short and medium hauls. There may also be an advantage in the owner's handling his own goods in that he takes more interest in protecting them from damage.

Another favorable factor undoubtedly is the absence of the terminal hazard that results when the goods of many shippers are mixed together and sorted for distribution over various routes. The owner's truck goes from point of shipment directly to its destination and the cargo is not reshuffled at terminals en route where it may be lost and mis-shipped. The owner's policy covers no

terminal hazard, because inland marine policies ordinarily do not cover owner's goods on his own premises. Therefore, there are no large terminal fires to be charged against the loss record of the private carrier.

Many owners can afford to maintain their trucks in the best condition. They may not be under pressure to make runs to keep customers, since the trucking is a minor part of their operations.

Another factor probably is the rating method. The private carrier always is rated on the basis of the amount of liability provided in the insurance policy. The chances of payment by the insurance company are directly proportional to the premium, whereas the large motor common carriers are rated on the basis of gross receipts, which often bear no real relationship to the chances the insurance company runs of paying a large loss.

The operating hazards of private and contract carriers are the same as those of common carriers. Underwriting of the physical hazard is on about the same basis.

Policies covering both the trucker's own property as well as that of persons for whom he hauls also are written. In such cases the hazard is primarily that of the common or contract carrier.

Questions

1. What conditions in connection with the operation of motor carriers brought a demand for Federal regulation of interstate motor carriers?
2. Describe the more important provisions in the Motor Carrier Act regarding insurance on motor truck cargo.
3. Explain the effect of the I.C.C. endorsement to motor truck cargo insurance policies.
4. Why did Congress feel that motor carriers should be required to carry insurance on cargo although railroads were not made subject to a similar requirement?
5. Explain the statement that "a motor truck cargo policy indemnifies the truckman for loss or damage resulting from his legal liability as a carrier."
6. What is an "overturn"?
7. How broad is the theft coverage usually provided in a motor truck cargo policy?
8. Why is the extension of coverage to goods in terminals considered by insurance companies to be a serious additional exposure?
9. What are the more important exclusions usually found in a motor truck cargo policy?

10. Why is the gross receipts method of paying motor truck cargo insurance premiums likely to result in an inadequate premium to the insurance company during a period of rising prices?

11. Describe some important measures to prevent motor truck cargo losses.

12. What is the difference between the liability of a common carrier and that of a contract carrier?

CHAPTER IX

Air Cargo

Development of Air Transportation

The use of transport airplanes has brought about an entirely new concept of the speed with which goods may be sent from place to place. From the late 1920's, when scheduled air transport got under way, until World War II, the cargo carried by transport planes consisted almost entirely of mail and a limited amount of express. Transportation of goods by airplane was considered to be strictly an emergency measure. Transit insurance policies excluded air cargo unless there was a special endorsement providing such coverage. Air express costs were high compared to surface transportation costs; they were about eighty cents per ton-mile, whereas the average for bulk shipments of freight by railroad was slightly less than one cent per ton-mile.[1]

The use of the airplane during World War II in such projects as flights over The Himalayas between India and China and the performance of the "Berlin air lift" in the postwar era proved that large quantities of cargo can be hauled by airplanes. Technological developments speeded by the war brought the ton-mile cost of carrying freight by airplane down to an average of between fifteen and twenty cents per ton-mile for bulk shipment. Insurance companies now are requested to furnish insurance coverage on air shipments to all parts of this country, as well as to remote parts of the world.

The hazards of air transportation differ in many respects from those of surface transit. Insurance companies have had to evaluate the chances of damage to cargo from turbulent flights, the possibilities of crashes, and damage from the cold and rarefied air of high altitudes. Insurance policies have had to be adjusted to fit an entirely new set of conditions.

[1] The term "ton-mile" is a unit for the measurement of freight hauling. It is equivalent to the hauling of one ton of freight for a distance of one mile.

Insurance on cargo shipped by airplane is complicated by the fact that air cargo shipments usually travel by surface transit as well as by air. In surface transportation, a large proportion of the shipments are carried by railroad or by truck alone, without any combination of the two. Even when both rail and highway transit are used to carry a shipment, the hazards to the cargo are similar and the principal difference is one of degree.

Most air shipments must be handled by two or three different methods of transportation. Airports are located several miles from the centers of cities, and usually there are no sidetrack facilities, such as are used by shippers of railroad freight for factory-to-factory shipment. Even when an airborne shipment is made between two cities that have airports, almost invariably there is a motor truck haul of several miles between the airports and the city terminals of shippers and consignees. In many cases, there must be shipment by railroad as well as by motor truck and by airplane. Underwriters give consideration to the hazards of transfer from one carrier to another, as well as to the hazards of each form of transportation.

Air Carriers

The fact that air transportation is tied in with surface transportation is recognized in the Civil Aeronautics Act of 1938, which defines an air carrier as follows:

> "Air Carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in air transportation: Provided, That the Board may by order relieve air carriers who are not directly engaged in the operation of aircraft in air transportation from the provisions of this Act to the extent and for such periods as may be in the public interest.

An air carrier does not necessarily operate any airplanes. For example, the Railway Express Agency, which picks up and delivers air express packages, is an air carrier under the Civil Aeronautics Act. It has filed tariffs used in determining the charges made to the public for the carrying of air express.

Interstate air transportation is regulated by the Civil Aeronautics Board under authority of the Civil Aeronautics Act of 1938. The Board has charge of the economic regulation of airlines and also investigates aviation accidents. The C.A.B., as it is generally called, is important to inland marine underwriters because of its

regulation of air commerce. It serves a purpose in air commerce similar to that served by the Interstate Commerce Commission in land surface commerce. Airlines must have certificates of convenience and necessity from the C.A.B. before they can engage in scheduled air operations. Rates of fare and freight rates are also subject to its regulation.

The definition of the C.A.B.'s authority gives it the power to regulate the ground as well as the air portion of air commerce. This means that a motor truck completing the delivery of an air shipment would be under the jurisdiction of the C.A.B. It might be under the jurisdiction of the Interstate Commerce Commission, too, if it were also carrying goods in interstate commerce not related to air commerce. The Civil Aeronautics Act also specified that the C.A.B. may exempt surface carriers from its regulations when the Board feels that such exemption is justified. This power to exempt the surface carrier from regulation can be used when the Board feels that the I.C.C. already is regulating the surface carrier in a manner satisfactory for air commerce.

An important difference between air and surface commerce is the fact that the Civil Aeronautics Act does not specify the liability of air carriers. (This is in contrast to the fact that the liability of surface carriers is set out in the Interstate Commerce Act and its amendments.) The Civil Aeronautics Act does not specify the manner in which air carriers may limit their liability in bills of lading or shipping receipts. Air common carriers, therefore, are subject to the common law liability of the common carrier, and to such statutes as may apply to carriers in general.

The liability of a common carrier is different from that of a contract carrier, and there may be occasion for the underwriter to determine whether goods are shipped by an air common carrier or by an air contract carrier. In its investigations and orders, the C.A.B. has followed surface carrier precedent in ruling that the status of a carrier as a contract or common carrier is determined by what it does rather than by its declared purpose.[2] In one case, the C.A.B. ruled that the making of individual contracts with each passenger did not remove the carrier from its status as a common carrier, nor did it make any difference whether the transportation was solicited by the carrier or by the passenger.[3]

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[2] See United States v. California, 297 U. S. 175, 80 L. ed. 567, 571 (1936), for language of the Supreme Court of the United States on this question.

[3] Page Airways, Inc., Investigation, May 17, 1946, Docket No. 1896, 6 C. A. B. 1061.

The Warsaw Convention

The liability of the air carrier may differ, depending upon whether the shipment is in domestic or in international commerce. No uniform bills of lading are required in domestic air shipments, although there is a tendency for air carriers to use similar forms. The liability of the carrier is specified in the air waybill,[4] which has tended to follow express company limits of liability.

In international air commerce, the liability may be regulated by the agreements reached at the Convention of Warsaw, Poland, of October 12, 1929. This treaty, or "convention," has been signed by many nations, and commerce between any two "Warsaw countries" is limited by its terms.

There are two principal ways in which the Warsaw Convention affects international air transportation between two countries that have ratified the convention. First is in the provisions for air waybills and baggage checks, and second is the limitation put on the carrier's liability. Although the convention does not provide for uniform air waybills, it lists provisions that must be contained in the air waybill and designates the form and manner of handling it. The practical effect of this is that most international shipments by air are sent under a uniform air waybill, even though the shipments are not all between "Warsaw countries."

Article 18 of the Warsaw Convention provides, in brief, (1) that the air carrier shall be liable for damage sustained during the transportation by air, (2) that transportation by air shall include the time during which the goods are in the custody of the carrier on board an airliner or in an airport, but (3) that the transportation by air shall not include any transportation by land, by sea, or by river performed outside an airport.[5]

Article 19 provides that the carrier shall be liable for damage occasioned by delay in the transportation of passengers, baggage, or goods.

Article 20 provides that the carrier shall not be liable if it proves that it or its agents have taken all necessary measures to avoid the damage or that it was impossible to take such measures. The practical effect is similar to that of the common law, which does not

[4] "Air waybill" is a term used by air carriers to designate a bill of lading used in connection with transportation of goods by airplane.

[5] This clause has a different effect from that of the definition of an air carrier quoted above from the Civil Aeronautics Act of 1938 applying to domestic air carriers in the United States.

hold common carriers liable for "acts of God." The burden of proof is on the carrier to show that everything was done that could be done to avoid the accident. This may be difficult for a carrier to prove.

Article 20 also states that in the transportation of goods and baggage the carrier shall not be liable if it proves that the damage was occasioned by an error in piloting, in the handling of the aircraft, or in navigation and that, in all other respects, the carrier and its agents have taken all necessary measures to avoid the damage. It is evident that this is an important limitation on the liability of the carrier.

Insurers of goods transported by air between countries that have ratified the Warsaw Convention must take this limitation of liability into account. It would be a favorable underwriting factor when insuring the legal liability of an airline but would be an unfavorable factor when insuring goods being shipped by air between "Warsaw countries." Its practical effect is lessened somewhat by the fact that the burden of proof is on the airline to show that it took all necessary precautions. Any omission on the part of the air carrier would nullify the provision.

Article 21 provides that contributory negligence on the part of the injured party may exonerate the carrier wholly or in part from his liability, depending on the circumstances.

The second portion of Article 22 provides for the limitation of liability to a specified amount unless a higher valuation is declared. This is similar in its effect to the released liability provisions of the Interstate Commerce Act. It reads:

> In the transportation of checked baggage and of goods, the liability of the carrier shall be limited to the sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the actual value to the consignor at delivery.

The figure of 250 francs per kilogram is defined as a gold franc of specified fineness and is equivalent to approximately $7.73 per pound in United States currency. There is no limit on the value that can be declared.

It is customary for international air carriers to arrange for insurance on behalf of their customers when they so request. This

insurance is charged for at rates in addition to the extra valuation charge. (It is similar in effect to the insurance arranged for owners of household goods by motor truck carriers that specialize in hauling such goods. See Chapter VIII.) This will be discussed later in this chapter in connection with insurance for airlines, because the coverage frequently is provided in the same policy with the legal liability coverage.

Types of Air Carriers

Air express. There are several different types of air carriers, which perform various functions. The Railway Express Agency is the principal organization handling air express. An express company performs the same function for air express that it does for railway express. It picks up the package at the shipper's door, hands it over to the principal carrier for air transportation, accepts the package from the airline at the airport nearest the destination, and delivers it to the consignee.

The charge for the entire trip is specified in a tariff filed by the express company. The total rate is based upon the charge made by the airline to the express company, to which the express company has added its own charges for pickup and delivery. Neither the shipper nor the consignee needs any contact with the airline, nor does either have to consult airline tariffs to determine the cost of the shipment. That is all a part of the express company service.

Many shipments are made by air to cities with no airport. In such cases, the package may be shipped by railroad (in the custody of the express company) from the nearest airport city to the destination. For example, such a shipment might be handled (1) by an express company truck from shipper's plant to the airport, (2) by airplane to the airport nearest destination, (3) by express company truck from the airport to a railway station, (4) by train to the city of destination, and (5) by express company truck to the address of the consignee. The carrier throughout the entire trip is the express company, in so far as any claim for damages is concerned, and the terms of the express company's bill of lading would determine the liability for damages.

Consolidation of air shipments. Another type of air carrier is the consolidator or forwarder. He performs the same function as the consolidator of surface shipments, and he may operate for air freight or air express shipments or for both. The express or freight

charges for shipping a single shipment of ten packages, for example, are much less than the charges for handling the same ten packages as ten separate shipments. The consolidator may operate his own trucks for pickup and delivery purposes, or his operation may consist entirely of consolidating the shipments. In either case, he is the originating air carrier, and his liability is that of a common carrier as limited by the bill of lading he gives.

Air freight. Some of the airlines have made arrangements for pickup and delivery of air freight. Air freight differs from air express in that it consists of bulk shipments and is directly comparable to railroad freight. Pickup and delivery of air freight is handled on much the same basis as the pickup and delivery of less-than-carload lots of rail freight. The pickup and delivery is done by a trucker who operates under a contract for the airline. The charge for pickup and delivery may or may not be a part of the tariff filed by the airline.

There are several possible arrangements, and the air waybill may or may not cover the pickup and delivery service. Underwriters inquire whether the airline takes the responsibility for the pickup at the shipper's place of business and for delivery to the consignee's place or whether the trucker is responsible. An indication could be secured by determining whether the shipper calls the airline and reports a shipment to be picked up or calls a trucker and arranges for him to deliver the shipment to the airline at the airport.

Scheduled airlines. The most important air carriers are the airlines. There are several different classes of airlines, but most of them are common carriers in so far as their relations with the public are concerned. There are many differences in their methods of operation that affect the chances of safe delivery.

First to be considered are the scheduled airlines. These lines operate according to regular timetables filed with the C.A.B. and advertised to the public. No airline can operate on a regular schedule for the carrying of passengers or cargo for hire, or advertise to the public such regularity of operation, without securing a certificate of convenience and necessity from the C.A.B. This is comparable to the situation in the field of surface transportation, for a trucker or railroad cannot set up interstate operations without securing a certificate of convenience and necessity from the Inter-

state Commerce Commission. The scheduled airlines are common carriers.

The scheduled airlines are under safety as well as economic regulation by the C.A.B. They are required to conform to the highest standards of safety, and their pilots are required to pass special tests before they can secure transport pilot rating. Mail contracts have been let only to the scheduled airlines, and mail pay has been an important factor in maintaining the income of these airlines during periods of financial stress. Their principal revenue through the 1930's and 1940's consisted of mail and passenger revenue, but the freight revenue is building up rapidly. There may come a time when freight revenue will be the principal source of income, just as it is the principal source of income for the railroads.

Scheduled airline operation has reached a high standard of safety, and crashes are rare. When a crash does occur, it is likely to result in total loss of the cargo, owing to a shattering of the load in case of a high-speed crash or to the fire that occurs frequently when fuel tanks are ruptured. In order to avoid catastrophe losses, it is advisable for a shipper to arrange for extremely high value loads to be divided between two or more planes. The chances of loss from air accident on the scheduled airlines are not much different from those in rail shipments. The chief differences between underwriting air and surface shipments arise from the differences in type of merchandise shipped by air, which will be discussed later.

Nonscheduled airlines. A second group of air carriers consists of the nonscheduled airlines. They may be carriers of passengers or cargo or both, but they do not operate on regular schedules. They are extensive haulers of freight but do not participate in the hauling of mail or express. There were few of this type of carrier until the end of World War II. After the war, many surplus Army cargo planes were purchased by individuals or companies in order to set up nonscheduled airlines. A large proportion of these new operators were men who had had flying experience in the armed services, and they felt that there was an opportunity for a greatly expanded air freight service.

The early years of these nonscheduled airlines were comparable to early motor truck operations. Some of the new ventures were well managed, but others were operated on limited financial capital and did not last long. Some of these operators did not appear to

have the money or the facilities to maintain their equipment properly, and there were some accidents that C.A.B. reports indicated were due to operation in marginal weather.

Eventually there emerged several financially stable nonscheduled airlines. Strong competition between the scheduled and the nonscheduled lines brought the rates for air freight to new low points. In 1948 the C.A.B. put a floor under air freight rates to avoid what might have developed into ruinous rate-cutting. The floor set by the C.A.B. was sixteen cents per ton-mile for the first 1,000 ton-miles of a freight shipment and thirteen cents per ton-mile above that.

Insurance on Air Cargo

Airlines are not required to carry insurance on the cargo they haul. In case an air carrier goes out of business without having insurance to cover loss of cargo, shippers may be unable to collect for lost or damaged cargo.

Insurance companies may be called upon to insure cargo to be hauled by a local airplane operator who does not make a business of carrying cargo. There may be an emergency in which the assured charters an airplane to handle a special shipment. Such an airplane operator may not be a common carrier but is likely to be a contract carrier. The liability of a contract carrier usually is limited to damage resulting from his negligence unless he has assumed a greater liability by his contract.

There also is the possibility that such a local operator may not be equipped to handle cross-country flights with the degree of safety attained by the airlines. Most airlines, both scheduled and nonscheduled, use multiengined planes with more than one pilot aboard. Smaller operators who are called in for emergency flights may fly in single-engine ships with a single pilot.

There may be occasions when a policyholder will ask for insurance on the contents of his own planes. Many corporations and individual business men are using aircraft for the transportation of their employees and occasionally to carry cargo. This is comparable to insurance on the contents of an assured's trucks. Underwriters inquire carefully into the safety of such air operations. Some business airplanes are operated with the same care as airline operations and with skilled pilots, but this may not be true of others.

There is no opportunity to recover the amount of a loss from a carrier when the cargo is shipped in the assured's plane. This situation justifies a higher rate for the insurance than is required for cargo shipped by common carrier.

Insurance companies are likely to have requests for trip transit insurance on air cargo. It has been customary for insurance companies to exclude coverage under ordinary trip transit policies for shipments by air. An increasing volume of freight is being flown to its destination, and many trip transit policies are now being endorsed to cover air shipments. It is likely that the exclusion of air coverage eventually will be eliminated from transit policies. Whenever air freight is covered, the underwriter has an additional factor to evaluate in considering the desirability of the insurance prospect.

The liability of an air carrier depends primarily upon its common law liability, which is almost an absolute liability, as explained in a previous chapter. The important thing to be investigated is the limitation that may be placed on the amount of liability by the terms of the air waybill. Domestic waybills issued by the airlines are not required to be uniform, but many airlines do use waybills containing identical provisions. A typical air waybill contains a space in which to insert a declared value, following which are the words:

> Declared Value agreed and understood to be not more than $50 for any shipment having a gross weight of not more than 100 pounds, or 50 cents for each pound gross weight for any shipment weighing in excess of 100 pounds, unless a higher value is declared and applicable charges paid thereon.

The conditions of this air waybill are similar to those of the uniform express receipt in that the value is limited to $50 for shipments of less than 100 pounds and to fifty cents per pound for shipments in excess of 100 pounds. Inasmuch as air freight consists largely of high-value merchandise, the average shipment is likely to be worth more than fifty cents per pound. Underwriters usually insert in the policy a provision regarding the value to be declared by the assured on his shipments. This provision should be called to the attention of the assured so that he will make the proper declarations when shipping goods.

When shipments are made on other than scheduled airlines, it is customary for the underwriter to determine whether the goods are shipped under circumstances that make the carrier a contract

carrier and hence liable only for negligence losses. Many of the nonscheduled airlines are common carriers and issue air waybills similar to those used by the scheduled airlines, but this cannot be taken for granted.

Nature of cargo ordinarily shipped by air. Cargo likely to be shipped by air differs from the usual cargo shipped by railway or motor truck. Air cargo is more nearly comparable to goods shipped by express than it is to railroad freight. It is usually high-value merchandise that needs expedited handling.

There are two basic reasons for fast shipment of merchandise. The first is perishability of the goods. This is true of perishable foods and flowers shipped in large quantities in domestic air commerce. Rapid shipment by air results in less spoilage than if the food is shipped by slower surface means, and there is less loss by deterioration in transit. This saving helps to pay the extra cost of shipping by air.

The second reason for shipping goods by air is that the shipping cost is relatively unimportant when the article has a high value in proportion to weight. For example, suppose that the cost of shipping an article by air from New York to Chicago is ten cents per pound. If the material is coal, which is worth something less than a cent per pound, the cost of air shipment would increase the delivered cost more than ten times. This would be a prohibitive cost of shipment except in an emergency. If the article is worth ten cents per pound and the cost of air shipment remains at ten cents, the total price of the article would be doubled by air shipment. It would not be economical to ship such goods by air except perhaps in the case of perishables. But suppose the goods are worth $5.00 a pound and consist of such articles as jewelry, pharmaceuticals, ladies' fashionable clothing, or perfumes. The ten cents per pound for shipment would be negligible compared to the total price. In many cases the relatively slight additional cost of air shipment for such valuable merchandise is more than offset by the advantage of getting it to market several days sooner than would be possible were it shipped by surface transportation.

The underwriter will find that the average shipment by air express or air freight will be many times more valuable per pound than the average shipment by surface transit. There is a greater chance of catastrophe loss because of this higher value. There also may be a greater susceptibility to damage or greater perishability,

and this can be determined by ascertaining the type of merchandise to be shipped by the assured.

The underwriter may be asked to furnish coverage against loss of market due to delay. There are occasions when airplanes are grounded for a day or more by bad weather. The perishability of the goods or of the market must be examined with great care when coverage for delay is to be provided. Insurance to cover loss due to delay may be provided when the policyholder requires it to fill a special need.

Insurance for the shipper. Insurance on air cargo usually is against "all risks" of external loss or damage. This is in contrast to specified perils insurance policies usually written to cover goods sent by surface carrier. The broad coverage on air cargo is justified by the valuable nature of most air cargo. It is characteristic of transportation insurance that broad coverage is given on property that has a concentration of value within a small space. Such property is much more susceptible to pilferage than less valuable cargo. The owner of such property feels that he needs and is willing to pay for insurance against mysterious disappearance and other unaccountable loss ordinarily not covered under a specified perils policy.

It has been brought out that most air transportation includes transportation for part of the way by surface carrier, frequently by motor truck. Insurance company experience has indicated that "all risks" coverage on motor truck operations can be provided only on the highest type of motor truck carrier. The checking of packages must be handled carefully at all transfer points. There may be times when the underwriter would be willing to provide "all risks" coverage for the air portion of the transportation, but he may believe that only a specified perils coverage can be written on the surface transit. When this situation occurs, the break between air and ground coverage should be specified in language similar to that used in the Warsaw Convention, in which air carriage is limited to the custody of the airline while in an airplane or on an airport.

Air cargo insurance coverage ordinarily excludes war risks, and this may be the only exclusion of consequence. Loss by strike, riot, and civil commotion may be excluded if there is reason to believe the hazard is out of proportion to the rate for the policy.

Some of the older forms of air cargo coverage contained an

exclusion of loss resulting from delivery by parachute. Actually this form of delivery is not practiced except in an emergency or under wartime conditions. An aerial pickup and drop service was in operation for several years through several eastern states. Containers of cargo were dropped from a low-flying plane, and the cargo to be picked up was caught by a hook arrangement that trailed beneath the plane. If such an operation were to be insured, a higher rate would seem justified than for coverage on a conventional air cargo operation.

An air cargo policy should be so written that it covers general average charges. It has been explained previously that there is seldom an occasion to apply the principles of general average to inland marine losses when the property is being carried by surface carrier or when it is insured at a fixed location. However, an airplane is similar to an ocean-going ship in that jettison of cargo or of a portion of the plane might be necessary to save the rest of the ship and cargo. It is likely that marine law would be applied to such a case, and the owner of cargo might be liable for general average charges. His insurance should cover such a possibility.

Transportation policies covering loss of air cargo usually specify a limit of liability per plane, as well as a limit of liability in any one catastrophe. Underwriters make inquiries regarding the value of a policyholder's shipments in order to set the limit per plane high enough to cover the usual shipments. The catastrophe limit is intended primarily to cover a concentration of goods in a terminal. The limit should be at least as high as the total values the assured might ship or receive through a single terminal in one day.

Many of the airlines have arrangements whereby they can procure insurance for their customers on shipments of goods. The insurance is available on standard goods only and not on certain types of easily damaged property. A typical insurance arrangement excludes coverage on livestock, perishables, and radio, X-ray, and electronic tubes. This form of trip transit policy covers against all risks of physical loss or damage from any external cause except loss directly or indirectly due to legal seizure, war risks, or hostilities. The amount of insurance the shipper may obtain is the same as the valuation he declares for the purpose of carriage under the air waybill. However, recovery also is limited to the actual value of the goods at destination at time of loss, plus ten per cent, if that amount is less than the declared value. The rates

for such coverage are in addition to the valuation charge the carrier receives to compensate him for carrying valuable goods.

There may be occasions when a policyholder wishes to secure insurance through the air carrier for a part of his value and to insure the remaining value otherwise. In such cases, underwriters check to see that there is no conflict with the airline coverage and also that the coverage is excess insurance above that arranged by the airline.

Insurance for the carrier. An insurance policy written for the air carrier covers primarily its legal liability for loss of, or damage to, property in its custody. The air carrier that is a common carrier has a heavy liability amounting almost to that of an absolute insurer of goods in its custody. Many insurance policies purchased by airlines provide for the insuring of the shipper's interest, as described above.

Most policies issued to air carriers differ from legal liability policies on other carriers in that they insure the complete legal liability of the air carriers. Policies issued to truckmen usually are limited to cover certain specified perils; seldom is a policy issued to a truckman to provide "all risks" coverage of his legal liability. The air carrier policy usually covers loss from physical damage only and does not cover his liability for loss due to delay. This liability for delay could be covered if an insurance company wished to grant the coverage and could secure a rate commensurate with the hazard.

There are some typical restrictions on policies written for air carriers. These policies usually provide that war risks are not covered, nor do they cover legal seizure. It is provided that the shipper is required to declare a value on each shipment and that the insurance company is not liable above the value declared by him. Certain extremely high-value goods are excluded from coverage in the usual policy; such items include currency, watches, jewelry, precious stones, negotiable paper, and uncancelled stamps. Such property can be covered under special forms at rates commensurate with the hazard. As a matter of fact, much of such property is carried as mail and is insured under registered mail policies. The carrier would have no reason to insure his legal liability for such mail shipments under his cargo policy, because the Post Office Department is responsible to the shipper for registered mail shipments.

Premiums for air carrier cargo liability policies are paid to the insurance company upon the basis of the total values declared by the shippers. This method of calculating premiums makes certain that the company receives premiums in proportion to the risk assumed. This is one reason why a broad coverage can be granted on air cargo whereas it has not been feasible on motor truck cargo policies. If all shippers by truck were required to declare the value of their shipments and all truckers paid their insurance premiums upon the basis of the value shipped, an equally broad coverage might be feasible for motor truck cargo insurance.

An air carrier's responsibility may be different from that of a surface carrier in respect to damage done on the lines of a connecting carrier. The Civil Aeronautics Act does not specify that the originating carrier is responsible for damages beyond its own line. This responsibility, in so far as the shipper is concerned, is a matter of contract between him and the originating carrier.

The Civil Aeronautics Act does not contain any provision regarding the carrying of insurance by airlines to protect shippers. Thus if an airline should go out of business, there would be a possibility of loss to shippers who had claims against it. In the absence of an insurance provision such as the Interstate Commerce Commission endorsement on the motor truck cargo policy, the airline's insurance policy protects the shipper only to the extent of the policy coverage and is not intended to guarantee the payment of any loss not covered by the policy.

The underwriting of an air carrier risk must take into consideration all the operating factors. A policy providing coverage solely on the airline operation would be less hazardous than one that also includes ground risks of delivery by motor truck. Most of the airports are well guarded, and there is less chance of theft on the airport premises than there is on a highway or at delivery points where a truck might be left unattended. A large air carrier probably would find a deductible policy the best arrangement. This would permit the carrier to make its own adjustments with shippers in the case of small losses and would give it protection against any catastrophe losses.

Questions

1. What new hazards to cargo in transit resulted from the growth of air transport?

2. Compare the relation of the Civil Aeronautics Board to air transportation and the relation of the Interstate Commerce Commission to surface transportation.

3. What is the Warsaw Convention and what is its importance to air commerce?

4. What different types of transportation may be involved in carrying a shipment by air express?

5. Name the important types of air carriers.

6. What types of cargo are frequently shipped by air?

7. Why is "all risks" insurance coverage desirable on the types of cargo ordinarily shipped by air?

8. In what important respect do most insurance policies issued to air carriers differ from those issued to motor carriers?

PART IV

Business Coverages Other than Transit Policies

CHAPTER X

Jewelers' Block Insurance

Development of Jewelers' Block Coverage

The jewelry trade is subject to greater chances of loss by theft and mysterious disappearance than other mercantile establishments. Burglars, sneak thieves, and confidence men are watching constantly for opportunities to make off with gems and high-value pieces of jewelry. In spite of precautions and alert clerks, the frequency of these losses is such that the jeweler needs broad insurance protection that includes coverage against theft of his stock. It is convenient for him to have the entire insurance coverage on stock written in a single policy rather than to have it split between fire, extended coverage, and burglary policies. An "all risks" type of policy also can provide coverage against miscellaneous perils not covered by specified perils policies.

The need for a broad insurance coverage in a single policy on jewelry stocks became evident in the early years of this century, but American companies were not empowered by state insurance laws to write such a policy. New York City was the center of the jewelry trade in the United States, and the laws of New York state (as well as those of many other states) separated the underwriting powers of fire and casualty insurance companies so that it was impossible for American insurance companies to write a single "all risks" policy on goods at a fixed location.

This separation of underwriting powers is not a characteristic of English insurance law, and underwriters at Lloyd's in London began to write a broad form of jewelry policy about 1900. It was called a jewelers' block policy, taking its name from the French words *en bloc,* meaning "all together." The jewelers' block policy of Lloyd's became available to jewelers in the United States through brokers in New York City. A large number of these policies were written between 1900 and 1920.

Not all jewelers carried these broad insurance policies. Many

jewelers purchased fire and windstorm policies and also bought a burglary policy when they felt that the risk of burglary justified it. Outside the large cities, merchants of the early 1900's did not feel the need for burglary protection that they do today. Outside theft insurance was available to jewelers through the Jewelers' Safety Fund Society, a mutual insurance company.

Following World War I, and particularly in the years from 1920 through 1925, the United States experienced a crime wave that had a profound effect on the jewelry business and jewelry insurance. The loss experience of Lloyd's on jewelers' block policies rose to unprofitable heights. As a result of the increased number of losses from burglars and thieves, jewelers began to feel a greater need for broad insurance protection. Lloyd's ceased insuring any but the best jewelers, and members of the jewelry trade realized that they might be left without adequate insurance protection unless the experience improved. They organized what was known as the Jewelers' Survey Bureau, which examined every jewelry insurance proposal submitted for insurance with Lloyd's. The experience continued to be unsatisfactory and by 1925 it was becoming extremely difficult for jewelers to secure jewelers' block policies.

There was a feeling in the jewelry trade and among insurance men that the coverage might be written more satisfactorily by American companies who were on the ground and thoroughly familiar with American conditions. As pointed out above, American insurance companies could not legally write the coverage in New York state. It was not recognized as an inland marine coverage because the insurance covered primarily goods at a fixed location. As a matter of fact, the Lloyd's coverage had been written in their nonmarine department.

Inland marine underwriters were familiar with "all risks" coverage, and they showed an interest in writing jewelers' block coverage if it were made legally possible for them to do so. In 1925, largely as a result of efforts by the jewelry trade, the New York legislature changed the insurance laws to permit the writing of jewelers' block insurance by marine or inland marine and casualty insurance companies.

Casualty insurance companies never have shown much interest in jewelers' block insurance, and the bulk of the coverage now is written by inland marine departments of American insurance

companies. Lloyd's participation has been largely by way of reinsurance since the early 1930's.

Although the jewelers' block policy is so worded that it covers at any location, it is intended primarily to cover at a fixed location. The transportation coverage it provides consists of coverage on goods in the hands of salesmen and on goods that may be in transit to and from customers or supply houses. This is purely incidental in most jewelry establishments. Thus the jewelers' block policy is one of the few inland marine policies that insure property at a fixed location with relatively little transportation hazards coverage.

The Jewelers' Block Policy

The jewelers' block policy was developed independently of any other marine or inland marine policy and its terms are largely peculiar to those needed for coverage on jewelry establishments. Many of them are not found in any other insurance policy.

The clause specifying territorial limits is worded as if the policy were intended as a floater coverage. The property is covered "while in or upon any place or premises whatsoever in the continental United States of America, the Hawaiian Islands, Alaska, and Canada, and also (subject to the limitations and exclusions hereinafter specified) while being carried or in transit within or between the above geographical limits." The limited amount of transportation coverage, however, is indicated in two clauses that appear later in the policy. The maximum liability of the company for any one loss in respect to:

1. (Outside limit) Property in transit by express or first class registered mail (air mail or air express, if endorsed hereon and not otherwise limited) or which is deposited in the vault of a bank or safe deposit company or which is in the possession of a customer or in the custody of a dealer in property described herein not employed by or associated with the Assured, is limited to $......
2. (Travel limit) Property elsewhere than at the premises of the Assured (not included in clause one) is limited to $......

It can be seen from these provisions that the policy amount is intended to apply to the business premises of the assured and specifies the location coverage. The outside and travel limits apply to the true transit or floater coverage provided by the policy.

The outside limit expressed in the first clause quoted above applies to four situations. The first is property in transit by express or by first class registered mail; the second, property the

assured has placed in a safety deposit vault; the third, property in the hands of a customer; and the fourth, property in the custody of another dealer in jewelry. These are all situations in which the goods are not under the control of the assured. No moral hazard on the part of the assured would be anticipated in connection with such goods. Underwriting of these transit hazards is concerned chiefly with the value of property placed in the hands of others and the frequency with which such shipments are made.

The travel limit in the second clause quoted above is intended to cover the property that the assured himself or his representatives may have outside the premises for business purposes. Many jewelers have outside salesmen, and it is necessary for them to carry expensive samples. There is a considerable exposure to loss, and it is customary for underwriters to examine this part of the risk with extreme care. The past history of each salesman usually is secured.

The property insured is described in general terms to include that which is usual to a jewelry establishment and includes pearls, precious and semi-precious stones, jewels, jewelry, watches and watch movements, gold, silver, platinum, other precious metals, and alloys and other stock usual to the conduct of the assured's business.

This type of property is insured by the policy in three situations specified in the policy.

The first occurs when such property is owned by the assured.

A second situation occurs when it has been delivered or entrusted to the assured but belongs to others who are not dealers in such property and not otherwise engaged in the jewelry trade. This refers to customers' property in the custody of the jeweler. The coverage indemnifies the jeweler for loss due to his legal liability as a bailee and also insures the property for the customer. It is known as bailees' customers insurance. The principles of this type of coverage and the liability of a bailee will be discussed in detail in Chapter XIII, inasmuch as this coverage is merely incidental to the jewelers' block policy.

A third situation occurs when the property is "delivered or entrusted to the assured by others who are dealers in such property or otherwise engaged in the jewelry trade, but only to the extent of the assured's own actual interest therein, because of money actually advanced thereon, or legal liability for loss or damage

thereto." This is a more limited coverage than the bailees' customers protection granted for customers' property because it covers only to the extent of the assured's interest or liability.

The policy presumes that other members of the jewelry trade will have taken out insurance of their own, and they should look to their own insurers for protection of their interests. Customers, on the other hand, are not presumed to have insurance against all the hazards covered by the jewelers' block policy. The jeweler should give his customers as broad a protection as he gives his own property.

The basic coverage of the jewelers' block policy is one of the broadest of any inland marine insurance policy. The coverage clause reads:

> This policy covers loss of and/or damage to the above described property or any part thereof arising from any cause whatsoever except as hereinafter mentioned.

The protection afforded by the words "arising from any cause whatsoever" is broader than that given by a clause covering "loss or damage from all risks." To be covered under the jewelers' block policy, a loss would not have to result from a risk (or chance occurrence). It might be the result of some known cause that could be anticipated.[1]

Exclusions. The true coverage of the jewelers' block policy, however, must be determined from an examination of the exclusions. This is the case with any broad policy of the "all risks" type. The exclusions of the jewelers' block policy are peculiar to the needs and conditions of the jewelry trade and will be examined in detail.

The first exclusion relates to infidelity and excludes:

> Loss or damage or expenses by or resulting from theft, conversion or other act or omission of a dishonest character (including sabotage) on the part of the assured or his or their employees or any person to whom the property hereby insured may be delivered or entrusted by whomsoever for any purpose whatsoever unless such loss arises when goods are deposited for safe custody by the assured, member of the firm or salesman while traveling, or while the goods are in the custody of (a) the Post Office Department as first class registered mail, or (b) a common carrier, or (c) a mere porter, helper or carrier not in the permanent employ of the assured.

[1] See Chapter V for a discussion of "all risks" coverage and an ocean marine case in which the court interpreted "other causes of whatsoever nature" and "all risks" as meaning the same thing: Mellon v. Federal Ins. Co., 14 F. (2d) 997 (1926).

The principle of this exclusion is that loss is not covered when it results from infidelity of any person under the control of the assured. It is recognized that the assured cannot control the actions of (1) employees of common carriers, (2) employees of the Post Office Department, or (3) employees of a hotel or other place where the goods may be deposited for safekeeping.

The last phrase of this exclusion is a recognition of the fact that salesmen frequently make use of porters or helpers to carry their sample cases. Obviously it is impossible to investigate the background and possible criminal record of casual employees. The insurance company assumes the risk of loss by infidelity on the part of these helpers.

The second exclusion relates to "damage sustained while the property is being actually worked upon and resulting therefrom." Carelessness or errors on the part of the jeweler are not considered to be an insurable hazard. Such losses are part of the normal cost of the trade and should be stood by the jeweler.

The war exclusion clause is worded as a warranty, but the effect is the same as that of other war exclusion clauses. It eliminates claims for loss by seizure, warlike operations, piracy, and civil war, whether there is a declaration of war or not.

Another paragraph warrants that the policy will be free of loss from strikes, riots, civil commotion, or the acts of persons taking part in such disturbances. This provision frequently is eliminated by endorsement for the payment of an extra premium.

One of the most interesting exclusions refers to "Loss or damage (including loss or damage by fire or theft) directly or indirectly contributed to, by or resulting from typhoon, hurricane, tornado, cyclone, volcanic eruption, earthquake, flood (meaning rising navigable waters), subterranean fire or other convulsion of nature: —This exemption only applies to risks on land." This appears to be an attempt to exclude losses from what are known in connection with common carrier liability as "acts of God."

It is not in harmony with the provisions of other inland marine policies. Most specified perils policies include windstorm protection, and few "all risks" policies exclude windstorm or earthquake damage. It may be that the originators of the form considered these calamities as being catastrophic in nature and uninsurable except under special conditions. It is interesting to note that the term "windstorm" is not used. Perhaps a loss from a windstorm

that could not be classed as a "typhoon, hurricane, tornado or cyclone" might be considered as covered. It is interesting to speculate on what is meant by a "convulsion of nature."

In actual practice, the windstorm, tornado, hurricane, and cyclone coverage usually is endorsed on the policy at the windstorm rate; or the windstorm coverage may be written separately in connection with a fire policy. It is permissible to exclude fire coverage by special endorsement. In this case a separate fire and extended coverage policy usually is written. The rating bureau rules do not provide for extending the policy to cover flood or earthquake damage, but earthquake coverage sometimes is added by endorsement.

It is odd to find a policy basically as broad as the jewelers' block policy containing an exclusion of such a hazard as tornado or cyclone, which is covered in practically all other comprehensive insurance policies. It is a pitfall to the agent or the underwriter, who must be certain that the coverage is added by endorsement or is provided in a separate policy. Otherwise a loss is likely to result in embarrassment to the agent or underwriter and dissatisfaction on the part of the policyholder.

A rather lengthy exclusion refers to shipments of insured property. It excludes shipments by freight, whether by land or water. Shipments by mail must be by registered first class mail, and shipments by air mail are covered only if permission is given by special endorsement on the policy. Express must be in sealed packages and be sent by railway express, and air express shipments are not covered unless so provided by special endorsement on the policy.

There is a further agreement that railway and air express shipments must be made in wax- or lead-sealed packages with a declaration to the carrier of not less than ten per cent of the value of the contents, but not necessarily more than $1,000 on any one package. An optional endorsement permitted by the standard rules allows this latter restriction to apply only to packages valued at more than $1,000. It is important that the insured understand this restriction in order to make shipments in accordance with it. Otherwise he may find that he has no coverage for an important shipment because it was not properly sealed.

It is interesting to note that the wax and lead seal requirement does not apply to shipments by mail. United States Post Office Department officials believe that the most effective seal is by means

of the Post Office stamp over the intersections of the paper on the back of the envelope. It is almost impossible to reseal perfectly an opened envelope if the Post Office registry ink stamps have been placed across the intersections of the paper.

The breakage of articles of a brittle nature is not covered unless the breakage is caused by burglars, thieves, fire, or an accident to the vehicle or other conveyance in which the insured property is being carried.

There is no coverage on goods sold on the installment plan after the property leaves the custody of the assured.

There is an exclusion that takes cognizance of the temptation for jewelers and their families to wear jewelry in their possession for sales purposes. It excludes loss or damage while the property is being worn by the assured or by any officer, director, agent, employee, servant, or messenger of the assured, or by any dealer or other person, firm, or corporation engaged in the jewelry trade or by any of their officers, directors, agents, employees, servants, or messengers, or by any member of the family, relative, or friend of any of the aforesaid, or while in their custody for such purpose. The wearing of jewelry adds to the chances of loss, and the added hazard is not contemplated in the premium for the jewelers' block coverage.

This clause is so worded that it excludes coverage on jewelry displayed by models. This too presents an extra hazard that the insurance company cannot afford to assume unless there is an added premium for it and unless the company has an opportunity to specify the protection to be given the jewelry so displayed. When jewelry of considerable value is to be displayed by modeling, it is regular practice to arrange for special police protection. If the insurance company is satisfied that the protection is adequate, it can extend the policy to cover the display.

Another exclusion refers to loss or damage to property while at any public exhibition promoted or financially assisted by any public authority or by any trade association. Such concentrations of jewelry are a temptation to thieves. The insurance company must have an opportunity to examine the protection of the exhibit before it is committed to coverage. Exhibitions are insured, but the conditions surrounding each exhibit must be appraised by the insurance company and a special premium commensurate with the hazard must be paid.

This exclusion refers specifically to exhibitions promoted or financially assisted by a public authority or trade association. It is worded in such a way as to allow coverage on a private exhibition arranged by the assured for sales purposes. It is regular practice for jewelry salesmen to exhibit their samples to prospective buyers. There is no intention of excluding coverage on such displays, even if the circumstances of the exhibit might bring it within the definition of a "public exhibition."

An unattended vehicle exclusion excludes coverage when the property insured is in or upon any automobile, motorcycle, or other vehicle unless, at the time the loss occurs, there is actually in or upon such vehicle the assured or a permanent employee of the assured, or a person whose sole duty it is to attend the vehicle. There is no coverage if the assured, or his employee, leaves the vehicle unattended, even if it is locked. This exclusion does make allowance for the assured to hire someone specially to look after the vehicle during his absence, but the person so hired must stay in or upon the vehicle. This would seem to exclude any loss while the vehicle is in a garage or parking lot in the sole custody of the garage- or lotkeeper but is so located that it is not under the constant surveillance of an attendant.[2]

The unattended vehicle exclusion does not apply to property in the custody of a common carrier or to property in the custody of the Post Office Department as first class registered mail. This is a reasonable exception because (1) such property is not under the control of the assured, and (2) the insurance company would have a chance to recover a part or all of such loss from the common carrier or from the Post Office Department.

Another clause provides: "No claim shall attach for any unexplained shortage." This is intended primarily to exclude inventory shortages for which there is no explanation. Even with such valuable property as jewelry, there are losses from carelessness, from shoplifters, and from pilferage by employees. Insurance companies feel that this type of loss can be controlled by the

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[2] See William Kinscherf Co. v. St. Paul Fire and Marine Ins. Co., 234 App. Div. 385, 254 N. Y. S. 382 (1931). In this case the assured's salesman had left a car locked with jewelry inside and the car was broken into and the jewelry stolen. The court granted the defendant insurance company a judgment and said: "Such language can only be interpreted to mean that if the permanent employee of the plaintiff is not actually within or on the automobile, or so near as to be able to observe a theft of the contents, he shall not be deemed to be in attendance at the time the loss occurs."

assured. To insure losses from carelessness would be an invitation to the assured to abandon loss prevention procedures.

It is not the intention of the unexplained shortage exclusion to eliminate losses by sneak thievery when there is reasonable evidence of theft. Jewelry stores frequently are the victims of confidence men and women who operate in pairs, one of whom will divert the attention of a clerk while the other secretes a small but valuable piece of jewelry and makes off with it. Seldom is the theft actually seen, but the circumstances make it virtually certain that the theft was accomplished in such a manner. Such losses are paid without question when the assured or his employee is certain that the jewelry was taken at a definite time and place and that the jewelry was in its proper spot just previous to the occurrence.

The policy does not cover any reported shortage of goods from a package that was shipped by the assured and was received by the consignee in apparent good order and with the seals unbroken. Neither does it cover loss or damage to goods sent by any express line C.O.D. with the privilege of inspection by the consignee before delivery to him.

Losses resulting from window smashing are covered, but the assured must stand twenty per cent of such a loss. The twenty per cent deductible may be eliminated by endorsement for the payment of an extra premium.

Special conditions. Several special conditions appear in the policy as precedent to any recovery under the policy. The actual cash value clause is similar to such clauses in other inland marine policies. It states specifically that the loss shall not exceed the lowest figure put upon such property in the assured's inventories, stock books, stock papers, or lists existing at the time the loss occurs. It also provides that any antiquarian or historical value shall be excluded.

Claims for loss or damage of pledged articles (on which loans have been made) are limited to the amount actually loaned and unpaid plus the accrued interest at the legal rate.

The clause referring to coverage on the property of others reserves to the insurance company the right to adjust such losses with the owners. The insurance company also reserves the right to conduct and control the defense of the assured in any court proceeding in respect to any claim from others. The expenses connected with such defense are paid by the insurance company.

The policy contains a provision that the insurance company shall not be liable for more than the total amount of the insurance granted under the policy. This is intended to prevent the company's being held liable for an amount in excess of the policy amount in case a total loss of the assured's property plus the loss of other people's goods exceeds the policy amount.

There is a warranty (which may be made an agreement if the company desires) that the assured will keep a detailed and itemized inventory of all property, including salesmen's stocks, in such a manner that the exact amount of any loss can be determined accurately therefrom. The clause does not specify that the inventory must be kept in duplicate or in an iron safe (as does the iron safe clause used on some fire insurance policies), but the loss or destruction of the inventory would make it difficult for the assured to prove that he had kept an inventory in such a manner that the company could determine the loss therefrom.

The assured is obliged in case of loss to produce all accounts, books, papers, and invoices, to submit to examination, and to cause all other persons to submit to examination, as far as the assured can control the actions of the other parties. This clause is similar to provisions in other inland marine and fire policies.

The "other insurance" clause is similar to those in other inland marine policies. It is intended to make the jewelers' block policy excess coverage over other policies.

The policy contains the usual inland marine provision that the insurance will not inure directly or indirectly to the benefit of any carrier or other bailee.

It is warranted that the assured will maintain, in so far as it is within his control, the watchman or other protective devices described in the proposal. This provision is not common in inland marine policies, but it is found in many fire insurance policies.

There is a provision that the policy shall be reduced by the amount of any loss payment, but the amount is reinstated automatically unless the policy is endorsed to the contrary. An extra premium is payable to the company on a pro-rata basis from the date of the loss to the expiration of the policy. This is similar to the provisions of many inland marine policies. It is distinguished by an additional statement that any rewards paid by the insurance company for the recovery of insured property shall reduce the amount of insurance the same as a loss payment. (Rewards are

not considered part of the loss payment in so far as the policy limits are concerned.) This recognizes an established practice in the jewelry insurance business of paying substantial rewards for the return of stolen jewelry.

The following additional clauses appear in the policy and are either identical or similar in their effect to the parallel provisions in other inland marine policies as discussed elsewhere in this book:

Concealment and misrepresentation.
Notice and proof of loss.
No abandonment to the company.
Payment of loss sixty days after receipt of satisfactory proof of loss.
Subrogation rights of the company.
Sue and labor clause.
Suit clause.
No assignment of interest or change or waiver of conditions without written consent of the company endorsed on the policy.
Cancellation.

Procedure in Writing Jewelers' Block Insurance

There are important differences between procedures for handling jewelers' block insurance and the practice in handling other inland marine business. The proposal for jewelers' block insurance is much more important than the application for other inland marine policies. With most inland marine lines, the application is at best a representation on the part of the assured. Occasionally the application is omitted entirely, and in many cases the agent fills out the application to the best of his knowledge without the prospective assured's ever seeing it. Few companies require new applications for renewal policies.

The procedure is entirely different in connection with a jewelers' block policy. The proposal must be filled out in detail and signed by the prospective assured, because it reveals information that is vital to the proper rating and underwriting of the policy. The jewelers' block policy is the only inland marine policy in connection with which it is standard practice for the proposal to be attached to the policy and made a part of it. (This practice has been standard for many years in connection with life insurance but has never been adopted to any extent in other insurance fields.) The jewelers' block proposal, by its terms, is made a warranty by the assured in regard to the facts stated. The fact that it is attached to the policy and forms a part of it tends to give this warranty more effect than if it were not so attached.

The proposal is a four-page document inquiring into every detail of the assured's business and the protection of the premises from the hazards insured against. The assured is required to show the exact amount of his inventories during the past twelve months, the nature of his stock, and the proportion of different types of merchandise, such as diamonds, pearls, mounted jewelry, watches, silverware, and other stock. Pawnbrokers must show the amount loaned and the amount of unpaid balance plus interest. Jewelers must show what proportion of the value will be contained in safes when the premises are not open for business.

If there is to be coverage outside the business premises, the proposal must show the names of all salesmen, the amounts of jewelry they have with them, and the number of days they carry it with them on trips. The names and home addresses must be given of all persons who may have property valued at more than $5,000 in their possession outside the assured's premises. The insurance company customarily investigates the reputation and background of all such persons to see whether they have any criminal record and whether they have been involved in any jewelry losses in the past.

Full information must be given concerning all losses sustained by the assured during the five years previous to the submission of the proposal. This includes both insured and noninsured losses.

The proposal also indicates the coverage desired, whether insurance is desired to the full value of the stock, whether patterns, money, or furniture and fixtures are to be covered, and whether fire and extended coverage protection is desired in the policy.

There is no coinsurance clause in the jewelers' block policy, nor is there any requirement that the assured carry full insurance to value. However, the proposal discloses the full value of the insured goods, and the premium is calculated according to the relationship between the amount of insurance and the full value.

Rates and Premiums for Jewelers' Block Policies

Jewelers' block insurance is one of a half-dozen inland marine lines on which a specific rate for each assured customarily is computed by a rating bureau. There are only a few classes of inland marine business on which specific rates are so promulgated. The procedure differs from the fire insurance practice in that the rating bureau does not make any inspection of the insured property. The

insurance company desiring the rate quotation is required to furnish the rating bureau with all the information necessary for the rate calculation. The completed and signed proposal furnishes the necessary information for rate-making purposes.

A rating bureau may receive proposals for the same property from more than one company. If the proposals are in agreement regarding the insurance desired, the values, and the protection afforded, the rate quotation can be provided without difficulty to all the companies supplying the information. When the proposals are not in agreement, it is necessary that the information be checked before a rate can be computed. It is rating bureau practice to return conflicting proposals to the companies with a request that the discrepancies be reconciled.

The rating schedules used by the rating bureaus for computation of the jewelers' block rates follow the same principles as fire insurance rating schedules. The basic rate depends upon the nature of the assured's business, whether it is retail or wholesale, how large the values are, the protection afforded the premises, and the protection of the safes in which the property is kept when the premises are closed to business.

Charges are added according to the size of the community in which the property is located and other hazards to which the premises are subject. Credits are applied for special features of protection. It is desirable for an underwriter to get a copy of the rating schedule and study it so that he can understand why certain information is requested in the proposal. The final quotation made by the rating bureau is a quotation of premium rather than a rate quotation. The premium varies with the amount of insurance that the assured desires to carry, but not in direct proportion. Most losses are partial. The premium for insurance equal to fifty per cent of the value, for example, must be higher in relation to the amount of insurance than if full insurance to value is carried. See Chapter IV for a discussion of the coinsurance principle.

The rules of the Inland Marine Insurance Bureau make provision for special rating of properties when circumstances justify variation from the rating schedule. Circumstances justifying such treatment are an exceptionally good loss record, the size of the policy, and the nature of the assured's business if it differs from the average contemplated in the rating schedule. Diamond merchants handling large stocks (having average inventories of

more than a million dollars) or diamond dealers having small travel limits (less than $25,000) are examples of the types of business that may deserve special treatment.

Companies that are not members of or subscribers to a rating bureau compute their premiums on the basis of their own schedules, many of them using schedules similar to those of the rating bureaus.

Protection against Loss

Values in the jewelry trade are so large that they are a constant temptation to the criminal. Exceptional precautions must be taken to avoid loss. Special devices and procedures have been developed that can make larceny extremely dangerous for the criminal.

The most effective means of preventing losses by theft is the use of central station burglar and holdup alarm service. The protected jewelry store is equipped with electrical devices connected to a central station by special electrical circuits. The central station is manned twenty-four hours a day and has direct telephone or signal circuits to the police department of the city. Upon receipt of an alarm from a protected premises, the central station immediately relays the alarm to the police and also sends its own guard to the premises. It is seldom that a burglar or holdup man is able to get away with anything of value in the few minutes that it takes for the police and the special guards to arrive after the receipt of an alarm.

The burglar and holdup alarm devices are uncanny in their ability to report attempted theft. The simplest of them are contact devices placed on doors and windows. These are set when the premises are closed for the night. The opening of a door or window breaks an electrical circuit and sends an alarm to the central station and the police. It is hardly a matter of more than a few seconds from the time the door or window is opened until the police are on their way to the premises. Other devices can pick up the sounds of any attempt to break through the walls of a vault and report it as a burglar alarm. Most difficult of all for a burglar to circumvent are electric eyes. These can be placed about the premises so that it is impossible for anyone to walk about the place without breaking a light beam. The light used consists of invisible infrared rays, and the would-be burglar finds himself trapped by something he cannot see, hear, or smell.

The daylight holdup man also finds himself in difficulty if he tries to steal from a store protected by a central station alarm system. Alarm buttons are placed about the store in locations that enable a clerk to send an alarm without being detected. Ingeniously contrived foot buttons and panels are so placed that the clerk can send an alarm even though he is forced to stand with his hands in the air. The jewelry store with full central station burglar and holdup alarm protection is a preferred assured from the insurance company's standpoint. There is a substantial reduction in premium for the installation of central station alarm service.

Show windows often present a severe theft hazard. It is relatively simple for a thief to break a show window, grab the most valuable items, and disappear from a deserted street before anyone notices him. The charge in the rating schedule is considerably higher if the store has more than $500 worth of jewelry in any show window when the store is closed for business. It is highly desirable that the values in windows be kept as low as possible when the premises are closed.

The central station alarm service described above is an effective method of protecting show windows. Narrow strips of metal foil glued near the edges of the windows are broken if the window is broken or cracked. In case the window is smashed, an alarm is given immediately. Window smashers tend to avoid windows that are equipped with the foil of a burglar alarm service.

Another method of protecting show windows is by means of a double, swinging window. The second pane of glass is behind the regular show window and is arranged to swing inward. When the regular show window is smashed with a rock or club, the second pane of glass swings back with the blow, but it seldom breaks. It then swings forward into position again and is an effective barrier to the thief in his efforts to scoop up valuable jewelry.

Large jewelry stores and factories maintain other protective systems and procedures. Watchmen are employed as guards when the premises are not open for business. Watchmen should be required to register on a clock to insure the regularity of their rounds through the building. The burglar alarm central stations have arrangements whereby the watchman reports to the central station as he makes his rounds. These central station watchman patrol services are so arranged that if the watchman is held up and forced to maintain his regular rounds, he can send an alarm to the

central station and to the police without the holdup men's being aware of it.

When a jeweler has frequent occasion to show items of high value, he may have a special room for such purposes. There is an obvious hazard in exhibiting high-value merchandise in an open store where the clerk's attention might be diverted by the confederate of a thief. The quiet and privacy of a special room give the clerk or proprietor an opportunity to watch the jewelry and the customers to make sure that no jewelry is pocketed.

The jewelry industry is keenly aware of the hazards of the trade and of the necessity of keeping losses at a minimum if insurance premiums are to remain reasonable. The industry maintains the Jewelers' Security Alliance, which has as its purpose the prevention of theft, the apprehension of jewel thieves, and the recovery of stolen property. Its work is so effective that a substantial credit is given in the rating schedule for membership in the Alliance.

Underwriting Problems

Jewelers' block insurance is tied in so closely with the jewelry trade that it has many underwriting problems peculiar to this type of insurance and quite different from those of other inland marine lines. The coverage is so broad that extreme care is exercised in accepting policyholders.

Difficulties have arisen in connection with jewelry on consignment. Even in a business handling such valuable property as jewelry, in many instances property is sent on consignment without a clear understanding regarding responsibility for loss. Insurance companies try to impress upon jewelers the necessity for written agreement on a memorandum or invoice concerning liability for loss or damage to property in the hands of a bailee. It is difficult to prove verbal agreements or customs of a trade.

Although it is intended that the jewelers' block policy should provide insurance protection for all the assured's merchandise, there are circumstances in which exceptions are made. A department store that operates a jewelry department would not want to insure the entire stock of the store at the relatively high rates of the jewelers' block policy, and an insurance company would not care to grant broad coverage on ordinary department store stock. In such cases the covering clause is amended to include the de-

scribed jewelry and "other stock usual to the conduct of the assured's jewelry department" instead of all other stock usual to the assured's business.

It is permissible to exclude the risk of fire. In the many cases when the assured desires to carry a separate fire and extended coverage policy, the fire coverage is excluded from the jewelers' block policy. This exclusion refers only to fire loss on the assured's premises, since the fire insurance policy might not provide the needed coverage outside the premises.

Patterns, money in a safe, and furniture and fixtures may be covered if desired by the assured and permitted by the law or regulation of the insurance departments of the state in which the premises are located. Not all states permit furniture and fixtures to be covered under a jewelers' block policy. Other restrictions and extensions may be made to fit peculiar needs of an assured's business.

The location of the property is an important factor in underwriting. A large city lends itself more readily to window smashings and holdups than do smaller communities. It is difficult for strangers to "case" a jewelry store in a small city without being detected, because the people who frequent the locality are known. In larger cities strangers are common and no one notices them. The store's customers are not always known to the clerks or the proprietors, whereas the smaller town store has a regular clientele.

Many large cities maintain special police details whose job it is to protect jewelry stores and salesmen. Convoy duty is an important part of the work of a police jewelry detail. Specially picked detectives know all the jewelry salesmen, and they also know many jewel thieves and their methods of operating.

The police detail meets a jewelry salesman at the airplane or train, although the salesman seldom carries the gems on his person while actually traveling. The police detail then accompanies the salesman to pick up the gems at the express or baggage office and stays with him all day until the gems are put safely into a vault for the night. The salesman is under the constant care of the police convoy as long as he has the jewels in his possession and is within the jurisdiction of that police department.

The police detail also attends exhibits and social functions where large displays of jewels are likely, and they look out for thieves and confidence men. The value of the jewels under the protection

of a police detail may be tremendous. Millions of dollars' worth of jewels may be contained in a single shipment to an exhibit, and department store or convention exhibits may have total values up to $10,000,000.

Underwriters make inquiries of assureds regarding the cities to which their salesmen travel. Underwriters also find out which cities maintain police convoy protection for jewelry salesmen. Crime waves are of intense interest to the jewelers' block underwriter. He may be able to prevent a large loss to his company by refusing to write insurance in a city where a ring of jewel thieves is operating at a particular time.

There is romance in the handling and insuring of jewelry, and the underwriter will be helped greatly if he studies the customs of the jewelry business. The experienced jeweler knows the tricks and the dodges of the confidence man and takes precautions to prevent being victimized. The less experienced jeweler, or the jeweler who has moved from a small town to a large city, may not be alert to all the chances of loss. The underwriter examines the jeweler's knowledge of the business and learns whether he is aware of the hazards at his place of business. Premiums may seem high, but the risk is great because jewelers' block insurance is truly a catastrophe type of coverage.

Questions

1. With what insurance organization did jewelers' block coverage originate?
2. Discuss the conditions in the jewelry trade that brought about legislation to permit American marine insurance companies to write jewelers' block insurance.
3. How much transit insurance coverage is granted in the usual jewelers' block policy?
4. What property other than that owned by the assured is covered by the jewelers' block policy?
5. What principles are recognized in the exclusion in the jewelers' block policy relating to infidelity?
6. Loss from what hazard is excluded from the jewelers' block policy that is covered in almost all other inland marine policies?
7. Why does the jewelers' block policy exclude loss or damage to property being worn by the assured?
8. Of what importance is the proposal form in connection with a jewelers' block policy?

9. In what respect does the making of rates for jewelers' block policies differ from the rate-making procedures in connection with other inland marine policies?

10. Describe special devices used to detect burglars and robbers in jewelry stores.

CHAPTER XI

Instrumentalities of Transportation

THE "Nation-Wide Definition" provides that a marine or inland marine type of policy may be written on:

> Bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion are the only hazards to be covered. Piers, wharves, docks and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion. Other aids to navigation and transportation, including dry docks and marine railways, against all risks.

It is evident that the property described in the above quotation from the "Nation-Wide Definition" as "instrumentalities of transportation and communication" are structures that do not move in the performance of their intended functions.

Other instrumentalities of transportation that are movable may also be insured under inland marine policies. These include such property as railway cars and equipment, horses and wagons, and boats. The "Nation-Wide Definition" includes such property in the general classification of "movable equipment . . . property of a mobile or floating nature, not on sale or consignment, or in the course of manufacture, which has come into the custody and/or the control of parties who intend to use such property for the purpose for which it was manufactured or created."

The consideration of instrumentalities of transportation will be divided into three sections. The first section considers those properties defined by the "Nation-Wide Definition" as instrumentalities of transportation and includes those structures that may be insured under an inland marine policy. The second section considers what may be termed "land hulls" and includes property that acts as carrier of other property. The third section considers those marine hulls or vessels commonly insured under inland marine rather than under ocean marine policies.

I. STRUCTURES

Bridges, tunnels, and like structures are similar to buildings in their nature and logically would be insured in the same manner as other fixed structures. Bridges and tunnels are insured under inland marine policies because the fire departments of insurance companies did not meet the needs of bridge and tunnel owners. Bridges and tunnels are subject to many hazards that do not threaten ordinary buildings, and only an "all risks" type of insurance policy affords adequate protection.

Fire and windstorm losses to such structures have occurred frequently. Bridges have suffered serious damage from ice jams that form upstream of a bridge and exert tremendous pressure on the structure. Floods are likely to cause damage when the waters carry debris, or the waters may undermine the footings and piers. Bridges across navigable streams are subject to collision damage from passing ships. Earthquake is a serious threat in some parts of the country and is a possibility in any part of the United States. The severest earthquake ever to strike the United States occurred in the lower Missouri River valley a little over 100 years ago. Structural damage was slight only because there were few buildings in the area at that time.

The fire insurance departments of the companies were not familiar with "all risks" insurance and were not favorable toward writing the coverage on bridges. Marine underwriters approached the question of insuring bridges in much the same way they looked at the insuring of jewelry stores. They were familiar with "all risks" insurance on property in transit and were willing to extend the coverage to a new type of property. Lloyd's of London was among the first to write insurance on bridges under an "all risks" form, and this encouraged the American marine market to follow suit. By the time state insurance authorities found it advisable to encourage the defining of marine insurance, the insuring of bridges and tunnels under a marine form of "all risks" policy was so well-established that the definition followed the custom.

There are two justifications for the allocation of bridge and tunnel insurance to the marine classification. First, marine dry docks had been insured under ocean marine policies for many years. Second, bridges over navigable streams are subject to a marine hazard in so far as collision with ships is concerned. If the

classification of instrumentalities of transportation as marine risks seems a bit farfetched, it should be remembered that it is a historical development from the fact that marine underwriters were the first to recognize and fill the needs of the owners of such property.

Bridges

Many early bridges were wooden structures and were subject to destruction by fire or windstorm. Seldom were they built over navigable streams because they could not be made long enough to stretch across a large river. There were some stone-arch bridges even in ancient times, but these were difficult to construct over a deep river because a supporting structure had to be built to hold the sections of the arch until it was completed. The successful construction of long bridges awaited the invention of steel and the development of strong steel wire. About 100 years ago, John Roebling proposed the suspension of bridges from steel cables.

The completion of the Brooklyn Bridge in 1883 marked the beginning of modern bridgebuilding. It is a suspension bridge with a clear span of 1,595 feet and still serves. A few suspension bridges had been built prior to the Brooklyn Bridge, but the success of that venture assured the acceptance of the principle. Cantilever, steel arch, and truss bridges are also dependent upon steel for their construction. More long bridges are of the suspension type than of any other construction, and the longest is more than 4,000 feet in length. However, there is one cantilever bridge 3,500 feet in clear span, and there are two steel arch bridges more than 1,600 feet in length.

The construction of a bridge is a highly technical job and requires the most careful engineering planning. The weight of the structure and its traffic load must be computed and foundations built that will be sufficient to carry the load without settling. The pressure of flood waters, ice jams, and the wind must be anticipated and planned for in the strength of the structure. Occasionally, when the forces of nature are more powerful than the engineers anticipate, the insurance companies have an unexpected loss to pay. Windstorms, ice jams, flood waters, and collisions with ships account for many of the partial losses.

An interesting loss by wind was that of the Tacoma Narrows Bridge on November 7, 1940, in the state of Washington. The

bridge was only about four months old and was of a modern suspension type. Shortly after it was put into service, it was noticed that the bridge swayed and began to weave when the wind was from a certain direction. In fact, the people living in the vicinity nicknamed the bridge "Galloping Gertie." During a particularly strong wind (although not severe enough to be considered of hurricane force) the bridge collapsed. A loss of $4,000,000 was paid on the bridge out of a total insurance of $5,200,000, in addition to a use and occupancy loss of $240,000. It was reported that there was insufficient bracing against sidesway. In addition, the supporting girders on the sides of the bridge were solid and presented a broad surface against which the wind could exert its force. In the reconstruction of the bridge, the roadway consists of four lanes instead of two and therefore has more lateral strength; and the side supports are of open trusswork so that the wind pressure will be reduced.

The hazard of fire was severe on the older bridges, which had roadways of wood planking, but most of the newer bridges have incombustible roadways. This adds to the weight of the bridge but is considered necessary to eliminate the danger of losing the plank flooring in a fire. A severe fire in the wood planking can cause collapse of the steelwork.

Another severe fire threat to even the most modern bridges is the transportation of gasoline by motor truck. There have been several cases in which gasoline transports have caught fire on a bridge or the approach to one and have severely damaged or destroyed the structure. Fortunately this has not happened to any of the largest bridges. It is possible that the burning of a load of several thousand gallons of gasoline on a bridge would create sufficient heat to weaken the suspension cables and cause the entire bridge to fall in the river. Factors considered by underwriters are (1) whether a bridge is used regularly by gasoline transport trucks, (2) the width of the bridge, (3) whether there is sufficient room for passing without danger of sideswiping, and (4) whether the approaches are straight so that there is little danger of a gasoline truck's skidding into the end of the bridge in slippery weather.

A major problem in connection with bridge insurance is that of insurance capacity. Some of the larger bridges are insured for many millions of dollars. Experience is such that underwriters must anticipate a possible total loss to insurance in case of a dis-

aster. The collapse of a span like that over the Golden Gate at San Francisco might result in a loss of ten million or more dollars. There are bridges in this country insured for such large amounts that in order to cover them fully it has been necessary to secure policies from all companies that write bridge insurance.

Coverage under bridge insurance policies. The insurance coverage on bridges is comparable to that under the jewelers' block policy. It is against "direct physical loss or damage however caused except as hereinafter provided." As in the jewelers' block policy, this is broader basically than an "all risks" coverage, because the loss or damage does not have to result from a risk. The exclusions determine the actual coverage, and there are only four of them.

First, the war damage exclusion is similar to other inland marine war damage clauses. It specifies war, invasion, hostilities, revolution, confiscation, or destruction by any governmental authority or by order of any public official.

The second exclusion relates to riots, civil commotions, strikes, lockouts, vandalism, or malicious mischief. This exclusion sometimes is eliminated if the underwriters are willing to assume the risk of riot and civil commotion coverage and if the rate is commensurate with the hazard.

The third exclusion is similar in its intent to the inherent vice and the wear and tear exclusions of other inland marine policies, but it is worded to fit the circumstances of bridge coverage. It excludes:

> Loss or damage or expense caused by or resulting from inherent defect, wear and tear, gradual depreciation, or expansion or contraction due to changes of temperature, unless resulting in collapse of the property or a material part thereof. However, under no circumstances shall this company be liable for loss or damage caused, or contributed to, by the failure of the assured to keep and maintain the property in a thorough state of repair.

It will be noted that a collapse of the bridge is considered an insured hazard even though it is caused by inherent defect, wear and tear, or gradual depreciation, unless it is the result of the assured's not keeping the bridge in repair.

The fourth exclusion refers to loss or damage caused by neglect of the assured to use all reasonable means to save and preserve the property at the time of and after any loss or damage.

The extremely broad coverage described above is the accepted

form of bridge insurance, but there are times when specified perils policies are issued. Such policies list the perils to be covered and usually include fire, windstorm, flood, ice, collision, earthquake, and explosion; and they may also include collapse, riot, and civil commotion.

Bridge insurance policies also contain several special conditions, similar to those in fire or other inland marine policies.

The policy is voidable if there is any material change in the interest, title, or possession, or if the policy is assigned or transferred.

The usual fraud and misrepresentation clause is included to void the policy if the assured has been guilty of fraud or misrepresentation.

The coverage is subject to an eighty per cent coinsurance clause.

Most bridge policies include a substantial deductible in order to eliminate claims for small losses. The amount of the deductible is set according to the rate and the total amount of insurance on the bridge. The deductible clause is one peculiar to the bridge policy in that it provides that the deductible shall not apply if the cost of repairing the damage amounts to or exceeds eighty per cent of the actual cash value of the property immediately prior to the loss.

Other clauses similar to inland marine or fire policy provisions already discussed are:

Option of the company to take over material for which it has paid, and option to repair or rebuild.
Limitation of company's liability to cost of repair.
Provision that the company shall not be liable for any increased cost due to any law, ordinance, regulation, permit, or license regulating construction or repair.
Appraisal clause.
Examination of records.
Machinery clause limiting recovery to actual loss when part of a machine is damaged.
Reporting and proof of loss. Proof of loss required in four months.
Subrogation clause.
Payment of loss and suit.
Reduction of amount of insurance by loss, and reinstatement.
Provision that coverage shall terminate if premium is not paid within sixty days.
Cancellation clause with thirty days' notice from the company.

The computation of insurance rates for bridges must be largely a matter of judgment, because no two bridges are alike. Companies that are members of or subscribers to a rating bureau secure their bridge rates from the bureau after submission of all pertinent

information. This includes plans and specifications used in the construction of the bridge and a bridge inspection report. This report is a lengthy document that can be completed properly only by an engineer familiar with bridge construction.

Smaller bridges sometimes are insured by independent companies at rates computed purely on a judgment basis, but this is dangerous underwriting. Rules of the Inland Marine Insurance Bureau provide that the company applying for a bridge rate must submit a letter of authorization when the bridge is privately owned. In the case of bridges owned by a governmental authority, this is not required. Promulgated rates are valid for ninety days and, if a policy is written, for the period of the policy.

Use and occupancy insurance on bridges. As every motorist knows, many of the bridges in the United States are toll bridges. Any accident that closes the bridge to traffic results in a loss of revenue, in addition to the loss from physical damage to the bridge. Business interruption, or use and occupancy, insurance may be written to cover this loss of revenue. Most inland marine policies exclude loss resulting from delay or loss of use. Bridge insurance is one of the few inland marine coverages that make provision regularly for a use and occupancy coverage.

The use and occupancy policy follows closely the bridge property damage form. It provides the same broad protection with a few special provisions adapting it to the use and occupancy coverage. Three additional exclusions are:

1. Failure or breakdown of machinery or accessories unless it results from an external cause not otherwise excluded.
2. Suspension of use by a governmental authority unless such suspension results from damage by an external cause not otherwise excluded.
3. Suspension of use or prolongation of suspension due to an ordinance, law, or governmental order regulating the repair or rebuilding of the bridge, or by cancellation of or delay in the issuing of a license or permit.

The use and occupancy policy usually contains a seven-day deductible clause. The assured also is required to put the property back in complete or partial operation as soon as practicable after loss or damage, and the company is not liable for loss of revenue

after the time when the property could have been restored to use with ordinary diligence.

Coverage may be on a daily basis, with a limit of recovery per day, or the limit per day may be varied according to the seasonal fluctuation in revenue. It also is possible to write a reporting form with a provisional amount of insurance so that the recovery will be the actual amount lost, as closely as it can be calculated on the basis of the past experience. These use and occupancy forms follow closely the similar forms written in connection with fire insurance policies and need not be discussed in detail here.

Builders' risk bridge insurance. Protection may be afforded bridge builders by a builders' risk form to cover during construction of a bridge. The coverage is much more restricted than that under the property damage form. It covers against fire, lightning, flood, rising waters, ice, explosion, tornado, windstorm, earthquake, and collision, but excludes loss or damage caused by collision with construction material or contractors' or construction equipment. It includes coverage on the materials and structures the contractor must use in building the bridge. A deductible clause usually is a part of the conditions, and the exclusions and general conditions are almost identical with those of the property damage form. The values are reported monthly by the contractor, and the amount of insurance increases with the construction of the bridge.

A "full reporting" clause similar to that used on fire reporting policies provides that the company shall not be liable "for more than this company's percentage of that proportion of the actual loss sustained which the last reported value of the property covered herein bears to the actual value of said property as of the date for which such values were reported." In case of underreporting of values, this clause penalizes the assured on any loss to the extent of such underreporting.

Tunnels

The preceding discussion has used the word "bridges" entirely, but in general the same facts and observations are true of insurance on tunnels. Any tunnel that qualifies as an instrumentality of transportation or communication may be insured under the same conditions as a bridge. There are far fewer tunnels to be insured than bridges, and each is an individual problem. The value of a

tunnel always is high because of the great construction problems, and the insurance must be spread among many companies.

Wooden supports sometimes are used in the construction of tunnels, and these present special fire hazards. A relatively small fire in the wooden supports may fill the tunnel with smoke and gases so that it is impossible for fire fighters to reach the seat of the blaze. A construction project that uses large amounts of wood is underwritten with caution, and a tunnel with permanent supports of wood usually is considered of questionable desirability.

The earthquake hazard must be considered with special care in connection with a tunnel that extends under water. A crack in the tunnel wall might allow water to enter and flood it.

Other Instrumentalities of Transportation and Communication

Within a few years after the "Nation-Wide Definition" had been adopted, there were many questions concerning just what types of property might qualify for marine coverage. Among those that the Joint Committee decided may be insured under inland marine policies are radio towers, electric power transmission lines, water and gas conduits, and traffic lights. It is necessary occasionally for the Joint Committee to draw a fine line between what is and what is not an instrumentality of transportation or communication. Although it was decided that traffic lights do so qualify, it was decided that street lights do not. It also has been decided that the buildings in connection with any of these instrumentalities of transportation do not qualify for inland marine insurance. For example, the toll houses at the ends of the bridges may not be insured under an inland marine policy, and neither may pumping stations on water or oil lines, or the radio transmitting stations or their contents in connection with the radio towers.

Radio and television transmitting towers. Radio and television transmitting towers are costly structures and the radio stations desire insurance protection similar to that provided for bridges. No matter what hazard causes the collapse of the tower, the expense of repairing or replacing it is high. The towers are carefully designed, but there are occasions when unusual weather conditions result in serious damage or collapse. In the vicinity of Chicago on New Year's Day, 1948, several radio towers were partially destroyed as a result of ice accumulations from a sleet storm. The ice built up over a period of several hours until the towers

were holding many tons. The ice also increased the width of each structural member and gave the wind more surface against which to exert pressure. The extreme load plus the high wind pressure was more than the towers could stand, and upper portions went down. Other losses to radio towers from wind, or from a combination of sleet and wind, have been reported in Michigan, Iowa, and Tennessee.

Forest and brush fires are another serious threat to towers located in remote areas. Underwriters inquire whether a tower is in a wooded area and whether there is a clear space of several hundred feet on all sides. The typical construction for radio towers is a steel truss, and the open steelwork would soften and collapse under forest fire conditions.

Rates and forms for radio towers are not regulated; the underwriter must determine the needs of the assured and the coverage the company is willing to write. Each policy is made to fit individual conditions. The basic hazard is that of windstorm, but the windstorm rate may have to be adjusted according to the danger of ice accumulations. When underwriters are offered a tower of high value, or several towers in the same locality, they secure information from the United States Weather Bureau regarding the frequency and severity of ice storms in that region.

Use and occupancy and consequential loss insurance may be written on the towers in addition to the property damage coverage. Under the "Nation-Wide Definition" it is not permissible to insure buildings, their furniture and furnishings, generators, transformers, machinery, and other fixed contents and supplies under an inland marine form of policy. Such property must be insured separately under fire and extended coverage policies.

Transmission lines. Electric power transmission lines may be insured under much the same conditions as radio towers. The owner of a transmission line is interested primarily in protecting himself against a catastrophe loss such as might be caused by a widespread sleet storm or by a forest fire. Many transmission lines pass through heavily forested areas where there is a clear space of only 50 to 100 feet through which the line passes. A forest fire could destroy many miles of line, and complete reconstruction would be necessary.

Sleet storms result in breaking of the wires, but usually there is much salvage of materials. The towers may be intact and the wires

can be restrung, but the labor of restringing the wires can be tremendous if the sleet storm extends over a wide area. The rates for windstorm insurance are not of much help in determining an adequate rate for storm damage to transmission lines. Usually, it is the ice accumulation and not the wind that pulls down the wires. It is necessary to find out the frequency and severity of sleet storms in the area and calculate the probable time interval between storms of sufficient severity to pull down the wires.

It is desirable to have a deductible clause on policies insuring transmission lines in order to avoid small losses that might result from occasional vandalism or from strictly local freak weather conditions. These losses are much in the nature of ordinary business losses to a power company and the insurance contract should not be burdened with them.

Use and occupancy or consequential loss coverage is underwritten with caution because of the high losses that may occur. The restringing of wires that are down from a storm probably could be accomplished within a few days or a few weeks at most, but the rebuilding of a line destroyed by a forest fire probably would take months. The steel towers are built to individual specifications. It may take a long time to replace towers that are damaged beyond repair.

Pipe lines. Pipe lines carrying water, gas, or oil may be insured under inland marine policies. This is done when the assured feels that there is sufficient danger of loss to justify the protection. Occasionally the pipes are laid on top of the ground or partially exposed. In other cases they may be exposed where they are carried across rivers or canyons. Each pipe line must be considered individually and underwritten according to the chances of loss from the causes that the underwriter can foresee. Pumping stations may not be included in the coverage, since they are buildings and do not qualify for inland marine coverage.

Traffic lights. Joint Committee Bulletin No. 65 rules that traffic lights may be insured under an inland marine policy inasmuch as they are instrumentalities of transportation. The underwriting depends on whether the municipality desires a catastrophe coverage or is interested in a policy that would provide reimbursement for damage to individual sets of lights. A catastrophe coverage could be written with a deductible approximately equal to the cost of replacing one set of lights. This could be written at a favorable

rate because the chances of several sets' being involved in a single loss would not be large. If coverage for individual accidents such as might result from traffic collisions were desired, the rate would have to be considerably higher and probably would be comparable to collision rates for automobile coverage.

Piers, Wharves, Docks, and Slips

The "Nation-Wide Definition" provides that marine and inland marine policies may be written to cover piers, wharves, docks, and slips when the policies exclude the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot, and civil commotion. Piers, wharves, docks, and slips are aids to marine transportation. It is customary to insure the hazards of fire and the other risks enumerated above under fire policies. There are occasions when the owners of such property desire insurance against loss or damage from collision by vessels, high waves, and other miscellaneous hazards that may be covered under an "all risks" policy. This is one of the few cases in which an inland marine policy would be written to cover these miscellaneous hazards but exclude the hazards of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot, and civil commotion.

There is no uniform method of establishing rates and coverage for such property. Each one is considered individually in much the same manner as a bridge or tunnel. Elements to be considered would be the amount of marine traffic to which the property is subject, the exposure to collision, the protection from wave wash that might be afforded by breakwaters, and the construction and condition of the structures.

Dry Docks and Marine Railways

According to the "Nation-Wide Definition," dry docks and marine railways may be insured under marine and inland marine policies against "all risks." The policy may include coverage against fire and the other hazards that must be excluded from a policy covering piers, wharves, docks, and slips.

A dry dock is a dock into which a vessel may be placed and from which the water may then be pumped out, exposing the sides and bottom of the vessel. It is used to facilitate repairs to vessels and for examination and cleaning of the hulls.

A marine railway serves a purpose similar to that of a dry dock,

but it generally is intended for smaller vessels. The marine railway consists of inclined ways that extend from a sloping shore into deep water. A cradle on the way is let down into the water far enough so that a ship can be placed above it. The ship and the cradle are pulled toward shore at the same time until the ship rests in the cradle. The cradle and ship are then pulled onto shore, where the ship may be examined, cleaned, and repaired in the same manner as if it were in a dry dock.

The entire structures of dry docks and marine railways, including the movable and stationary parts, may be insured. The hazards are much the same as those to which piers, wharves, docks, and slips are subject. There is danger of total loss by fire in many cases because the structures are likely to be largely of wood. Windstorm and wave wash are other threats. There is also the possibility that a vessel may upset if it is not secured properly before the water is pumped from a dry dock or before the vessel is pulled from the water on a marine railway. Collision is a possible hazard if there is marine traffic in the vicinity.

Rates and coverage are developed to fit each individual structure. Judgment necessarily plays a large part in the calculation of these rates, because no two structures are alike.

II. "LAND HULLS"

The term "land hulls" is convenient to designate the type of rolling stock or vehicles that are used to transport goods and that may be insured under inland marine policies. This includes almost any transporting vehicle on wheels except automobiles and motor trucks. Although the laws of many states define inland marine or marine insurance in such a way that automobiles may be insured under inland marine policies, the practice is to insure automobiles under a special type of policy. Included in the "land hulls" insurable under inland marine policies are railroad rolling stock, mine rolling stock, and horses and wagons.

Railroad Rolling Stock

Railroad rolling stock includes locomotives and cars, both freight and passenger. The larger railroads do not insure the rolling stock they own. Their equipment is spread over such a wide area that only a small proportion of their total value would be involved in a

single accident, and they feel they can afford to carry their own risk.

Much of the new equipment used by the big railroads is insured because it is leased to them by an equipment trust, which holds title to it. The equipment trust arrangement will be discussed later.

The smaller railroads find it desirable to insure their equipment because a large proportion of their investment may be involved in a single accident. There are hundreds of short-line railroads in the United States that operate only a few miles of right of way. The shortest line listed in the *Official Guide of the Railways* is the Virginia Central Railway, which has one mile of track between Fredericksburg and West Fredericksburg, Virginia. Many railroads operate only a dozen or so miles of track, and from this small size they range upward to the gigantic systems with thousands of miles of track.

Many of the short railway lines operate for freight service only. They may provide trackage rights to other railroads and may not operate any equipment of their own. Other short lines do operate their own equipment and handle all traffic themselves. The short line that operates its own equipment needs insurance to cover any loss. This has been particularly true since the development of the Diesel locomotive. A single Diesel locomotive of the type used by small railroads for freight switching service may cost $100,000 or more. In fact, the locomotive may constitute more than fifty per cent of the value of the entire rolling stock of a small line.

It is customary for a railroad to assume liability for damage to the equipment of other railroads when the damage occurs on its tracks. This is comparable to a bailee liability, but it may be partly or wholly a contractual liability. The short railway line needs insurance to protect it from financial loss due to accidents to the equipment of other railroads. This may be written as an inland marine coverage.

Inland marine policies for a small railroad are written with two or more items.

One item lists the equipment, because the railroad probably would not want to insure miscellaneous small items such as handcars and small work cars. Any new equipment acquired during the term of the policy can be covered automatically for a short period to give the road a chance to report it.

A second item covers the liability of the railroad for damage to the rolling stock of other railroads for which it is responsible. This will be shown with a maximum amount per loss and also a maximum amount per unit. A small railroad might desire a maximum coverage per unit of $25,000 or $30,000, depending upon the type of cars usually handled over its tracks. The amount named might be adequate for a railroad handling freight cars only, but some of the new passenger cars far exceed those values. If it happened that the line regularly handled one of the new streamlined trains over its tracks, it might need much higher limits.

The maximum limit per accident would depend upon the number of cars and type of equipment regularly handled over its tracks. The value of a streamlined train may exceed a million dollars, whereas $100,000 may be a sufficiently high limit per accident if the equipment handled per day consists of only a few freight cars.

A third item sometimes included covers the liability of the railroad for damage to goods in its possession. A common carrier has a heavy responsibility for goods in its custody. A small railroad might find it advantageous to insure this liability, the same as a truckman does. The desirability of insuring this liability from the standpoint of the railroad depends upon the spread of value. If the road is operating only a few trains, there is a possibility that a single trainload would contain a value entirely too high for the road to assume the risk. There may also be a possibility of valuable concentrations of goods in a freight warehouse or in a yard where many loaded freight cars would be subject to a fire or other catastrophe.

Many railroad cars are owned by private corporations or persons other than railroads, and these also may be insured. Many commodities need special-type freight cars that may be furnished by the companies dealing in those commodities. Examples are acids, pickles, certain types of ores, cement, oil, liquefied petroleum gases, and refrigerated products. Other examples of costly railroad equipment owned by private corporations are the test cars used by manufacturers of railroad equipment.

If an owner has only a few cars, it is worth his while to insure them, even if his arrangements with the railroads are such that they assume responsibility for their safety or repair. The insurance would make certain of immediate payment in case of loss, and the

insurance company could take the responsibility of collecting from whatever railroad company was responsible for the loss.

Industrial railroad rolling stock used in a manufacturing plant may be insured, and so may mine rolling stock used in connection with mining operations. Some of this equipment may be similar to contractor's equipment and present similar insurance problems. The advantage of insuring such property under an inland marine policy is that the property is insured against loss from the many perils to which movable property is subject. The owner is relieved of worry concerning chance concentrations of value that may occur during periods when the equipment is brought in off the road for repair or during seasons when work is slack.

Railroad equipment trusts. One of the largest fields for insurance on railroad rolling stock is in connection with new equipment. Much of the new passenger equipment, such as Diesel locomotives and streamlined trains, is not owned by the railroads but is leased by them from equipment trusts. The purpose of the equipment trust is to secure a loan by using specific equipment as security rather than to use the general property of the railroad. This method is used particularly to finance the purchase of new equipment.

The equipment trust method of financing is used generally throughout the railroad industry, and it is particularly advantageous for railroads in the hands of receivers. If a railroad in the hands of a receiver desires to borrow money to make equipment purchases, the lenders of the money would have no security other than the general assets of a corporation already in financial difficulty. The purchase of new equipment is essential to the continued operation of a railroad and a help in bringing it back to a state of financial stability. Financial institutions are eager to lend the money if they can safeguard their investment.

The equipment trust arrangement solves the problem of financing equipment purchases for solvent railroads and for those in financial difficulty. The title to the equipment is held by the trust or by the financial institution lending the money, and the railroad leases the equipment under an installment purchase agreement. If all the payments are made on the lease agreement, eventually the railroad acquires title to the equipment. In case of default, and if the lender feels that there is no chance of that par-

ticular railroad's being able to make good on its commitments, the lender can take the equipment and lease it to another railroad.

The situation is similar to that under which individuals purchase automobiles or household equipment on the installment plan and under which the purchaser gets a conditional title but the true title rests in the seller until all the payments have been made. The person holding the true title has the right to repossess the equipment any time the installments are not paid. Each car or locomotive is titled specifically, and a plate is attached to the car or locomotive stating that it is owned by the person or corporation that holds the title. The name of the railroad operating the equipment may be painted all over the sides of it in big letters, but the true state of ownership is indicated by the small plate on the side of the car or locomotive.

The holder of the title to equipment financed under an equipment trust needs insurance on it. Inasmuch as the equipment may be in the hands of a railroad in financial difficulty, the lender could not afford to depend on the railroad to make good the loss of the equipment in a wreck or other catastrophe. The amount of the loan to build a streamlined train is sufficient to justify insurance because of the concentration of value. A Diesel-powered streamlined train may cost more than a million dollars. A major portion of this investment could be destroyed in a single wreck. Fires in Diesel locomotives occur frequently enough to be important hazards to the investment. Diesel locomotive fire losses have been reported in excess of $100,000 each.

Rates. Railroad rolling stock rates must be largely a matter of judgment, because each railroad operation is entirely different from any other. The hazard to a high-speed Diesel-powered streamlined train making an overnight run from Chicago to New York over the Pennsylvania mountains is entirely different from the hazard to the equipment of a small midwestern railroad that operates slow-speed freight trains in level country. Between these two extremes there are hundreds of variations in road conditions and geographical hazards.

The spread of value is important, and the rate must also take into account the loss experience of the railroad, whether the roadbed and trackage are kept in the best condition, and the financial standing of the railroad. When liability for loss of goods is insured,

the railroad's police organization must be examined to see how well it protects freight cars from loss due to theft.

The rates on much of the railroad rolling stock are made by rating bureaus, and each proposal for insurance must be submitted to the bureau for specific rating. A few independent companies specializing in this type of insurance make their own rates.

Horse and Wagon Floater

It is surprising in this age of automotive transport that insurance on horses and wagons continues to be an important inland marine coverage. Horses and wagons are still used extensively for city trucking where the speed of the motor truck loses its advantage. The use of horses for riding and recreational purposes is a big business. The insurance coverage of horses, wagons, saddlery, and other equipment follows the same procedure regardless of whether they are used for transportation or for recreation. Even when used for recreational purposes, the horse is an instrumentality of transportation, in spite of the fact that the rider comes back to the same place from which he started.

Horse and wagon floater coverage is standardized for most of the property eligible for this protection. The rating bureaus have established rates and forms except for auctioneers, stockyards, full mortality policies, circus, carnival, or theatrical properties, legal liability coverage for humane societies or veterinarians, and dealers whose principal business is the buying and selling of animals. These classes of horse and wagon properties are all eligible for inland marine coverage, but the coverage is not standardized and will be discussed later.

The standard coverage for horse and wagon properties, other than those exceptions listed in the preceding paragraph, may be provided to (1) horses and mules, (2) horse- and mule-drawn wagons and similar conveyances, and (3) harness, saddlery, liveries, blankets, and similar equipment. The basic policy used for this coverage is the scheduled property floater, the principal terms of which have been discussed in Chapter IV. A special endorsement or "form" is attached to the basic policy to give the protection desired.

The insurance on horses and mules is against death or destruction resulting from or made necessary by the specified perils listed in

the form. It is recognized that an animal may be injured to such an extent that it cannot recover or that destruction of the animal may be necessary to prevent intense suffering on its part. The loss of the animal under these circumstances is covered if the injuries are the result of one of the perils specified.

The perils specified in the form are (1) fire and lightning, (2) collapse of bridges or culverts, (3) flood (meaning rising waters), (4) collision, derailment, or overturning of land conveyance while the insured property is in transit thereon, and (5) the stranding, sinking, burning, or collision of vessels, including general average and salvage charges. The collision coverage is not coverage for collision of the animals or vehicles insured, but is limited to collision of a vehicle on which the insured property is being transported. This is further limited by a clause stating that the coming together of railroad cars during coupling operations shall not be deemed a collision.

The form is so arranged that additional optional coverages may be given by filling in appropriate spaces and amounts. The first group of these optional coverages includes windstorm, hail, riot, riot attending a strike, civil commotion, explosion, aircraft, and objects falling from aircraft. This is limited by clauses specifying that the windstorm and hail coverage does not include loss or damage caused by frost or freezing weather or by snow, sand, dust, or rain, whether driven by wind or not. Horses and mules are not covered while in any aircraft.

Theft coverage may be added as one of these optional coverages, but this does not include conversion or dishonesty on the part of persons to whom the property may be loaned or rented.

Losses from collision of the animals or vehicles insured may be granted, either as full collision coverage or on a $25 deductible basis. This applies to accidental collision of the property insured with any land conveyance other than a conveyance upon which the property is being transported.

It is optional to extend the "accident to conveyance" coverage of the form to include any accident to a land conveyance upon which the property is being transported except damage from coupling operations on railroad cars. This extension would cover, for example, damage resulting from collapse of the conveyance, which would not be covered under the basic provisions of the form.

Earthquake coverage is available as one of the optional extensions.

The final optional extension is coverage at race tracks. The basic form contains an exclusion of coverage while on the grounds of any public race track. This exclusion may be eliminated for the payment of an extra premium. The extension automatically takes care of injuries occurring on race track grounds from the perils specified but does not include injuries sustained as a result of racing. (The collision coverage, when in the policy, is limited to collision with any land conveyance and would not include collision with other objects such as the horse might run into while racing.)

There is a full contribution clause that has the effect of a 100 per cent coinsurance clause. This makes it necessary for the assured to carry full insurance to value or be penalized in the settlement of any partial loss. This clause may be deleted in so far as it applies to any scheduled item when a specific amount of insurance is provided for that item. It is customary to schedule valuable items and animals because it might be difficult to prove the value after they have been lost or destroyed.

The rates for the standard horse and wagon coverage are based primarily on the fire insurance rates at the location where the property is customarily kept. Sometimes the fire insurance rating bureau publishes a rate for floating property that is in and out of the location. When such an "in and out" fire rate is available, it is used as the basis rate, to which a small loading is added to cover the hazards of collapse of bridges and culverts, flood, collision of transporting conveyance, or sinking of ships.

When no "in and out" fire rate is available, the basis rate is the contents rate of the highest rated building where the property is customarily located, less a deduction of forty per cent. This reduction is justifiable on the ground that the property is away from the premises much of the time and is not subject to the full fire hazard of the premises. The loading is added to take care of the hazard away from the premises.

Rates for the optional coverages vary from five cents per $100 per year to seventy-five cents per $100, depending on the hazards covered. The fact that the rate for theft of animals is only about one-fifth the rate for theft of harness and saddlery reflects the difference in the chances of theft losses for these different types of

property. These rates are added to the basic rate plus loading for whatever optional coverages are added to the policy.

Miscellaneous Coverages on Animals

Coverage for dealers in animals is not subject to the standard form and rules but is written according to the needs of the assured. Most policies are on a specified perils basis similar in coverage to the standard form, but full mortality (life insurance) coverage can be written if the assured will pay a rate commensurate with the hazard.

Few companies write full mortality coverage. There are certain livestock insurance companies that specialize in that form of coverage. Full mortality coverage ordinarily is written under inland marine policies only when it is incidental to transportation insurance.

Property in the hands of stockyards may be covered. This coverage may take effect at a point away from the stockyard where the animals are purchased, or it may take effect when the animals are delivered to the yard. Not only horses and mules but cattle as well are covered for stockyards.

It is also possible to insure breeding animals, as well as fancy animals in the hands of circuses, carnivals, or theatrical producers, covering whatever hazards may be agreed upon between the assured and the insurance company.

Occasionally policies are written to cover the legal liability of veterinarians, humane societies, and others who may have animals in their custody for treatment or other professional purposes. Rates are on an individual basis, depending largely upon the fire rate where the animals are customarily located. Dealers who handle large numbers of animals may pay their premiums at so much per head (five or ten cents, perhaps). In the case of stockyards, the rate may be at so much per carload. These rates must be determined on the basis of the hazards covered in transportation and at the location after delivery, as well as upon the concentration of value at any one time and place.

III. MARINE HULLS

Vessels Insurable under Inland Marine Policies

It has been explained in some detail that inland marine insur-

ance is an outgrowth of ocean marine insurance. There is a tendency for these two types of insurance to grow apart into separate fields, despite the fact that the insurance laws of many states make no distinction between the underwriting powers of insurance companies regarding marine and inland marine.

It is interesting to note that inland marine insurance has started to move back into the province of ocean marine coverages in connection with small boats and their appurtenances. This is particularly noticeable in the areas of the inland states where there are small lakes and streams but where ocean marine coverages are largely unknown. Increasing numbers of city dwellers are moving to the lakes for their summer vacations and are purchasing outboard motors and small boats.

The larger craft may be insured under ocean marine policies. Small boats and outboard motors customarily are insured under inland marine policies. An investment of almost $1,000 in an outboard motor and boat is well worth protecting.

Two types of policies are written to cover outboard motors and boats, the first being a fire and theft policy and the second almost an "all risks" policy.

The first form covers the motor or boat, or both, wherever they may be during the entire year. Theft coverage is limited to theft of the entire motor or boat and does not cover pilferage of parts. There is no standard form and the provisions vary according to the ideas of the insurance company. Most of the policies follow the scheduled property floater policy in their basic provisions, with a short form added to provide the actual coverage. Exclusions frequently used are those relating to war damage, strikes, riots, and civil commotions; to use as a public conveyance; and while being operated in an official race or speed contest.

A broader form may be written as an "all risks" policy in terms similar to those of other inland marine forms, or it may be written in the terms of ocean marine language and cover against loss by fire, theft, collision, accident to conveyance upon which it is being transported, and perils of the sea, or marine perils. In so far as the motor is concerned, the most important fact is that either form covers loss of the motor overboard.

It is important to remember that the phrase "perils of the sea" does not include everything that can happen on the sea. It includes such happenings as stranding, sinking from an insured peril,

damage caused by severe weather, and collision while afloat. Fire is not considered a peril of the sea and must be covered specifically. Inasmuch as small boats and motors are carried frequently from place to place by automobile or truck, they are subject to land perils, and an "all risks" inland marine policy may provide broader coverage than a policy using the terms of the ocean marine policy.

Rates for outboard motor and boat policies vary from two to ten per cent of the value. Fire and theft coverage is written by various companies for rates of from two to three or three and one-half per cent. Full marine or "all risks" policies are written for various rates starting at about five per cent and ranging up to ten per cent. Some companies adjust their rates according to the location of the property and the type of lake or stream upon which it is to be used.

It may be that the coverage and rates will become standardized as the number of motors and boats increases and as the companies have an opportunity to examine their experience over a period of years. The hazard of loss of motors overboard has proved to be severe. Many companies recommend that their policyholders fasten the motors to the boats by chains or ropes before the motor is put over the side to be fastened in position.

Policies may cover specifically listed boats and motors, or they may cover on a blanket basis. Blanket policies usually contain a full contribution or 100 per cent coinsurance clause because the rates are based upon full insurance to value. This is not necessary in case of schedule policies, because the value placed upon specific items by the assured probably will be sufficiently close to the full value. Because a large proportion of the losses are total, the rates are commensurate with the hazard of total loss.

Yacht Insurance

Occasionally inboard power boats, small sailboats, and yachts are insured under an inland marine form of policy. This is done most frequently when the assured desires a simple form of coverage, such as against fire and theft only. Boats may be laid up for several months at a time or out of commission during an entire year; in such cases it is desirable for the owner to have fire insurance and perhaps theft insurance as well.

When more comprehensive insurance coverage is desired on an inboard power boat, yacht, or sailboat, it is preferable that an

ocean marine policy be written. These craft are subject to "perils of the sea," even though they are on inland waters. Marine insurance policies and maritime law have been developed to take care of the conditions to which they are subject. Not only do ocean marine policies cover the damage to the craft itself, but they can be written to cover liability for damage to other craft and to persons.

The line between inland marine and ocean marine insurance becomes somewhat hazy when insurance on motorboats is considered. Inland marine policies rarely provide any indemnity coverage for damage to the property or person of others but are limited to damage to the insured craft itself. When indemnity insurance is desired, the assured should look to a regular ocean marine policy for the coverage he desires.

Questions

1. How did it come about that bridges and tunnels are insured under inland marine policies?
2. Discuss the bridge owner's need for a broad insurance coverage.
3. Compare the coverage under a bridge policy with the coverage provided by a jewelers' block policy.
4. Why did the Joint Committee decide that radio towers and pipe lines may be insured under inland marine policies?
5. What are the most likely causes of severe damage to electric power transmission lines?
6. Why are pumping stations, transformer stations, and radio broadcasting stations excluded from coverage under inland marine policies on pipe lines, transmission lines, and radio towers?
7. In what respect does the coverage on piers, wharves, docks, and slips differ from that usually provided for dry docks and marine railways?
8. Why does a small railroad need insurance coverage on its rolling stock whereas a large railroad may feel justified in carrying its own risk on rolling stock?
9. What is a railroad equipment trust?
10. Distinguish between the coverage under the usual horse and wagon policy and full mortality coverage on animals.

CHAPTER XII

Miscellaneous Business Floaters

THE DISCUSSION of inland marine insurance in the preceding chapters has covered the insuring of goods in transit and of special types of property such as jewelry stores and instrumentalities of transportation. Another type of property that may be insured under an inland marine form of policy is that which has become known as floating property and the insurance on which has come to be known as floater coverage. This does not mean that the property floats on a body of water, but rather that it is of such a nature that its location is not fixed. Such property may rest at one location for a long time, but the location is not permanent and the property may be moved at any time.

There are circumstances under which it is difficult or impossible for an owner to foretell when he will need to move such property. It is essential that the insurance coverage be continuous, whether the property is in transit or resting temporarily in one place. The "Nation-Wide Definition" lays down conditions under which movable property can or cannot be insured under floater policies.

Several principles are used to establish the eligibility of property for inland marine floater coverage:

First, the property must be movable in nature.

Second, it must not be at any location where it is expected to remain permanently.

Third, it is considered essential that floater policies include transportation coverage to and from any temporary location where the property may be covered. Otherwise the policy would be providing a storage, not a floater coverage.

Typical property eligible for floater protection includes (1) exports and imports (which may be insured indefinitely at a fixed location as long as they retain their identity as exports or imports), (2) domestic shipments (but they may not be covered for more

than thirty days at any place of storage or deposit), and (3) property that by its nature must be used at different locations and is in storage only incidental to such use. Examples of this latter group would be contractor's equipment and road building machinery.

Insurance policies covering business and commercial property that is eligible for floater protection (in addition to exports, imports, and domestic shipments of goods) may be divided roughly into the following groups:

1. Equipment floaters covering equipment, instruments, and supplies used for work, demonstration, or sales.
2. Contents or stock floaters covering property in temporary storage and property undergoing processing outside the owner's premises.
3. Consignment or sales floaters covering property that is held for sale under consignment, or that is being installed, or that has been sold under an installment payment plan.

Floater policies contain basic provisions similar to the inland marine policies previously discussed. Added to these are special clauses to fit the needs of the particular type of property to be insured. This chapter discusses the various business floaters individually and comments upon the peculiarities of the property and of the insurance protection. Few of these policies are regulated or standardized, and insurance companies write the policies individually to fit the needs of the assured. Rates are based largely upon the experience and judgment of the underwriter. The past loss experience of the policyholder may influence the rate if the individual premium is large enough for this experience to have statistical credibility.

I. EQUIPMENT FLOATERS

Equipment floater policies insure movable property that is not on sale or consignment or in course of manufacture and that is in the hands of the assured to be used for the purpose for which it was made. Such policies do not insure property in storage at premises controlled or leased by the assured except when the storage is purely incidental to the regular and frequent use of the property for its intended purpose.

Contractors' Equipment

The contractors' equipment floater is designed to cover machinery of the type used by road builders, mining contractors, builders of dams and tunnels, and other contractors who use heavy and expensive machinery. Typical equipment to be insured under such policies are power shovels, air compressors, concrete mixers, pumps, boilers, stone crushers, pile drivers, tractors, bulldozers, portable tool houses, and scaffolding. Snow removal and road building equipment used by municipalities may be insured under this form. Any portable equipment used by a contractor may be covered, provided that it is regularly used out on a job and storage on the premises of the policyholder is purely incidental to regular use away from such premises. Automobiles and trucks are exceptions because these are insurable under special automobile policies and not under inland policies.

Policies are written on a schedule basis, with each piece of equipment listed and an amount of insurance specified for each. Small items such as wheelbarrows and shovels may be included in a blanket item, but it is customary to have a full contribution or 100 per cent coinsurance clause apply to blanket items. The territorial limits may be restricted to a particular state or county, or the policy may cover anywhere in the United States and Canada.

Coverages are set out in each policy according to the needs and desires of the assured. The usual coverages are for direct loss and damage by fire, lightning, explosion (except explosion originating within steam boilers or internal combustion engines), windstorm, earthquake, collapse of bridges and culverts, flood, and collision or overturning of a conveyance upon which the equipment is being transported. Riot, civil commotion, and strike coverage may be added at an extra premium.

For theft coverage, which is desired by some contractors, it is customary to include a deductible of at least $25. This eliminates small, troublesome losses and encourages the assured to provide watchmen and keep easily pilfered equipment under lock and key. It makes possible a lower rate than is possible for a full coverage policy.

Damage resulting from collision of the insured equipment, landslide, overturning, and cave-ins may be covered at an extra premium, and usually a substantial deductible is required. There is an obvious collision hazard to equipment being used in moun-

tainous country and in conjunction with other heavy machines. The upsetting and cave-in hazards also may be severe in mountainous country or near rivers and lakes.

Some of the drag lines used in strip mining operations may weigh almost 100 tons. This weight may be sufficient to overload ground surfaces, particularly where there may have been underground mining operations. Even if damage to the equipment is slight in such a cave-in, the expense of righting and pulling out a sixty- or seventy-ton machine is considerable and may run to many thousands of dollars. Gold dredges and other kinds of equipment that work in water or mud are subject to an overturning hazard. The loss may consist chiefly of the expense of salvaging the equipment, but this expense can be high.

The fire hazard may be severe to equipment used in cross-country operations. A forest fire could ruin an entire group of machines. Although the machines are usually made of steel and will not burn, it does not require much fire to take the temper out of the metal. Gasoline fires from fuel in the equipment itself constitute another hazard, especially when the work is being done out in the country and at a distance from municipal fire-fighting apparatus. Self-propelled equipment may be put out of commission by a seemingly minor fire, and it then becomes necessary to send flat cars or flat-bed trucks to bring out the damaged equipment for repair.

The values involved in a contracting operation may run to high figures. Single pieces of equipment may cost from $20,000 to $100,000. At the site where a dam was under construction a few years ago, the value of the equipment was reported to exceed a million dollars. A large part of this would have been subject to a single loss if the area had been swept by a forest fire.

The experience on this class of property in recent years has not been favorable. Rates are computed by the company underwriter on the basis of his judgment and experience. The lowest rate for the minimum coverage would be about one per cent of the value annually. Rates for deductible theft coverage may range from one-tenth to one-half of one per cent. Strike and riot coverage may cost another one-tenth to one-half of one per cent, depending upon the locality and the assured's record in regard to labor troubles. The rate for collision coverage on the equipment may be anywhere from one-half of one per cent to two per cent, depending upon the work being done and the weight of the machinery.

There have been cases in which the contractors' equipment insurance has been written at a "competitive" rate in order to obtain other parts of a large contractor's line of insurance. The result may be an inadequate rate for the inland marine portion of the line. This practice appears to have been partly responsible for the high loss ratio on this type of coverage.

Use and occupancy insurance may be written on such equipment to reimburse a contractor who might have to rent equipment in order to fulfill a contract on time.

In other cases the contractor may rent his equipment to other contractors, and he would lose rent if it were damaged or destroyed. This loss may be insured against under a rental value policy.

Most of the exclusions contained in the policy are those common to other inland marine policies. A specific exclusion designed for this type of policy excludes any loss resulting from an attempt to lift a weight heavier than the registered lifting capacity of the machine. Sometimes the policy also will exclude any loss resulting from an attempt to go over a bridge or culvert if the total weight of the machine is more than the indicated carrying capacity of the bridge or culvert. These are intended to encourage the assured to use proper care in handling this equipment.

Most policies exclude such property as plans and specifications. They also exclude underground property unless a tunnel job is intended to be covered and the policy is so written.

Farm Equipment Floaters

A variation of the form is written to cover farm equipment used by farmers on their own premises, or for farm contractors who rent out combines and other equipment. These policies are designed to cover the hazards to farm machinery, but the principles of coverage are similar to those used in insuring contractors' equipment. Fire is one of the principal hazards to some farm machinery because of the flammable dust produced by threshing and similar operations.

Farm equipment floaters are written on a schedule basis; each implement is listed, with an amount of insurance for each. Occasionally a blanket item is inserted, but many underwriters believe that this results in underinsurance. Some companies insert a small blanket item to cover miscellaneous tools.

Theatrical Floaters

The theatrical floater is designed to insure the scenery, costumes, and other theatrical properties used in the production of individual plays, and each policy names the play for which the property is insured. The form covers such property if it is owned, if it is held in trust, on consignment, or on commission, if the assured has made advances on it, or if it has been sold but not delivered. The form does not cover buildings, their improvements or betterments, or furniture and fixtures not shipped from place to place with theatrical troupes.

The hazards covered by the standard form are fire and lightning while in any business or theatrical building, excluding customary business premises of the assured other than theatres and playhouses. This means that the property is covered while being used in a theatre owned by the assured, but it would not be covered if located in any other business premises owned by the assured.

While the property is in transit by railroad, express, public truckmen, transfer, or other transportation company, it is covered against loss by fire, lightning, and collision, overturn, or derailment of conveying vehicles. While on ferries, the property is covered for loss by stranding, sinking, or burning, or by collision of the conveying vehicle. General average and salvage charges are covered while on land or on ferries. Livestock is covered for death or destruction made necessary by any of the specified perils.

The form excludes coverage on jewelry, accounts, bills, currency, deeds, evidences of debt, documents, money, notes, securities, and railroad or other tickets. Costume jewelry is covered, but this coverage does not extend to jewelry containing precious or semiprecious stones or made of gold or platinum.

Loss resulting from collapse of a building is specifically excluded unless such collapse is caused directly by fire or lightning. Also excluded is any loss caused by war and similar hostilities. Loss caused by riot, civil commotion, strikes, or labor disturbance is excluded unless the coverage is provided in a special endorsement.

A special warranty or agreement requires that the insurance company be given prompt notice if the property is placed in storage. There are two reasons for this requirement. First, the property is no longer producing revenue when it is placed in storage, and there may be a moral hazard. The insurance company may want to cancel the insurance or reduce the amount of coverage.

Second, the insurance company may want to inspect the storage location to see if the physical hazard is satisfactory and if the rate is adequate under the circumstances.

It is also warranted or agreed by the assured that he will not enter into any special agreement releasing or limiting the liability of any truckman or other carrier without having the written permission of the insurance company, which must be endorsed on the policy. (Chapter VI on common carrier liability discussed a case in which it was held that the released liability agreement customarily entered into with express companies is not a special agreement within the meaning of this clause.)

The form also includes a full contribution or 100 per cent co-insurance clause, making it necessary for the assured to carry full insurance to value if he is to recover the full amount of a loss. An "other insurance" clause is intended to make this insurance excess over any other policy on the same property.

The coverage may be broadened to include windstorm, hail, explosion, smoke, damage by vehicles or aircraft, water and sprinkler leakage damage, riot and civil commotion, and loss by theft. The usual rate for the standard form is two per cent of the value annually. An additional rate of one-half of one per cent is charged for theft coverage. Other coverages may be provided at rates similar to those charged by a fire insurance rating bureau. If the property is valued at $10,000 or more, it may be rated specifically by the inland marine rating bureau of which the company is a member or subscriber.

The standard form and rules do not apply to circuses, carnivals, costume rental agencies, or theatrical supply houses. Many such properties qualify for inland marine coverage, but the hazards vary to such an extent that standard forms and rates are not feasible for them. Such properties are insured under forms specially drafted to fit the circumstances of the individual case.

Morticians' Equipment

A mortician's activities require that portions of his equipment be used outside his place of business. Such property is subject to transportation hazards while being carried from place to place, and it also is subject to fire and other hazards while in use. The principal items usually are scheduled on the policy, but a miscellaneous item may be inserted to cover small pieces of equipment. The

form excludes (1) automobiles and their equipment, (2) furniture and fixtures intended for use at the premises of the assured (except perhaps folding chairs that may be used outside the premises), and (3) caskets and other stock for sale.

The coverage usually included in a morticians' equipment policy protects against loss by fire and lightning, windstorm, earthquake, transportation, and theft. Frequently a $25 deductible clause applies to theft coverage. The exclusions refer to gradual deterioration, moth, vermin, inherent vice, electrical disturbances, infidelity of assured's employees, and war damage. Some companies exclude loss of anything shipped by mail.

This form is not standardized, and the coverage varies considerably between companies. Rates are calculated according to the underwriter's experience and may be from one and one-half to two per cent of the value.

Morticians' Liability

Occasionally companies insure the legal liability of a mortician for damage to corpses. This covers the legal liability for damage resulting from the perils specified in the policy. Sometimes this is written as a separate policy, and sometimes it is added by endorsement to the morticians' equipment policy. The coverage is of questionable status because of the uncertainty regarding property rights in a corpse.[1] Many underwriters consider this a casualty coverage rather than an inland marine coverage.

Physicians', Surgeons', and Scientific Instruments

Physicians and surgeons may carry several hundred dollars' worth of instruments with them. Their instrument bags are stolen not only for the value of the instruments but also for the narcotics that may be contained therein. Dentists also have occasion to treat patients at home or in hospitals and occasionally must carry instruments with them. Other persons who may carry expensive instruments are surveyors, prospectors using electronic equipment, and men on scientific expeditions.

The coverage provided by most companies is of the "all risks" type and covers almost any loss. The coverage is not standardized; some companies issue specified perils policies to protect against the

[1] For a discussion of such property rights, see Jackson, Percival E., *The Law of Cadavers*. 2d ed. New York: Prentice-Hall, Inc., 1949.

principal hazards to which the property is subject. Exclusions are much the same as those on other "all risks" policies.

An important exclusion is that relating to electrical damage. The use of electronic equipment, which is increasing rapidly, makes it necessary that a company clearly indicate its intention regarding electrical losses.

Breakage of articles of a brittle nature usually is excluded. Medicines are usually excluded because it is extremely difficult to determine accurately the amount of loss. A physician ordinarily would not be able to report accurately the amount of medicine left in his bag at the time of a loss. Inasmuch as the value would not be large, it is simpler to exclude such property.

The policy may be written on a blanket basis to cover all the assured's equipment, or it may be written on a schedule basis. A blanket policy usually contains a full contribution or 100 per cent coinsurance clause. Many policies exclude any property not ordinarily carried by the assured outside his own premises, and this makes it necessary for the doctor to distinguish between his mobile equipment and that which remains in his office. (The "Nation-Wide Definition" provides that physicians' and surgeons' instrument floaters shall not cover equipment not commonly carried with the assured.) The schedule form eliminates any questions whether an item is insured, but it has the disadvantage of requiring the doctor to report the acquisition of any new pieces.

The rate for the blanket, 100 per cent coinsurance physicians' and surgeons' floater is about two per cent of the value; the rate for the schedule form is about one and one-half per cent. A somewhat higher rate may be used if the policy covers the property while it is left in an unattended motor vehicle. Rates on coverage for other scientific instruments depend on their use and the territory in which they may be used. Unless there appear to be unusual hazards, the rates would be much the same as for the physicians' form.

Radium

The radium floater is a specialized version of the scientific instruments form. Radium is extremely expensive. Because it is used in small quantities and in tiny containers, it is lost easily. Radium is used extensively by doctors and hospitals for the treatment of cancer and skin diseases. The standard form of radium floater is

intended for the protection of radium used for medical treatment purposes only. Radium used for other purposes may be covered, but it is subject to special rates and rules depending upon the hazards attendant upon the expected use.

Radium is used in small containers such as tubes or needles that may be placed on or in the body of the patient. It is standard practice to have some person constantly in attendance when a patient is being treated with radium. This is to make certain that the dosage is properly timed and also to see that the radium container is not misplaced.

This practice is taken into account in the rating of a radium floater, and the standard form contains a provision that the assured will use due diligence in the maintenance of special care and supervision of each patient under radium treatment, by a doctor, nurse, or other person specially designated to exercise such care and supervision. The person specially designated may be a member of the patient's family if the doctor in charge feels that the circumstances are such as to justify such a designation. An extra rate is charged when the assured wishes to have this special supervision clause deleted.

The coverage is against "all risks" of loss or damage, and there are only three exclusions. The first excludes loss or damage resulting from gradual deterioration and damage sustained owing to and resulting from any repairing and restoration process. The second is a war damage exclusion, and the third excludes loss of shipments by mail unless shipped by first class registered mail.

In addition to the special care clause mentioned above, the radium floater has another clause peculiar to this form. It requires that immediate notice of loss be given to the insurance company by telephone or telegraph. The recovery of a lost radium container is like looking for the proverbial needle in a haystack. Unless the search is started at once and makes use of proper methods, the container is likely to be swept out with the trash or washed down a drain and lost forever. A radium expert can use scientific detecting devices such as a Geiger counter to locate the radium. It is essential that an expert be secured at once; most insurance companies send one to the scene of a loss immediately upon receiving the notice that a loss has occurred.

The form contains a full contribution clause and the assured must maintain full insurance to value in order to recover losses in

full. The territorial limits are within the continental United States and Canada. The form is attached to the scheduled property floater policy, which contains the usual clauses found in other inland marine policies. A deductible of ten per cent or twenty-five per cent of each loss may be used to secure lower rates.

It is required that each tube, needle, plaque, or cell be listed specifically, showing the number of milligrams of radium, the character of the container, the Bureau of Standards Certificate Test Number, and the amount of insurance. Rates for the standard form are $1.75 for the first $5,000 of coverage, $1.50 for the next $5,000, and $1.00 for the excess above $10,000. Deletion of the supervision clause calls for an increase of seventy-five cents in the rates, and the use of a deductible allows a credit.

Radium in solution or in a bomb is rated specially, depending upon the nature of the container and the method of use. When radium containers are rented, an extra hazard is involved and the property may be specially rated.

Signs

It has become customary to insure neon signs and automatic or mechanical electric signs under inland marine policies. The "Nation-Wide Definition" does not mention signs, but Interpretative Bulletin No. 3 permits the insuring of electric and mechanical signs under a marine or inland marine policy. Such property seldom is subject to a transportation hazard after it has been installed, nor can it be considered an instrumentality of transportation.

Signs are of such a nature that their owners need a broad insurance protection, which marine and inland marine underwriters have been willing to provide. (Ordinary billboards or signs lighted by reflected light from electric lights are not customarily insured under inland marine forms.) Many neon or mechanical signs are expensive and are sold on the installment plan. This makes it desirable for the seller to protect his interest from the many hazards to which the signs are subject. Street clocks are considered to be mechanical signs.

The coverage has been standardized, but the coverage and rates promulgated by the rating bureaus vary considerably. The form filed by the Inland Marine Insurance Bureau is typical of the "all risks" forms. It is attached to the scheduled property floater policy and provides coverage against "all risks" of loss or damage. It

contains the usual exclusions of loss due to wear and tear, gradual deterioration, neglect of the assured, dampness of atmosphere or extremes of temperature, mechanical breakdown, electrical loss other than by lightning, and war damage.

Two special exclusions are designed to take care of peculiarities of sign coverage. The first excludes loss or damage caused by faulty manufacture or installation, or loss occasioned by the inherent character of the insured property. The second excludes loss caused by breakage during installation, repairing, or dismantling, and also excludes breakage during transportation unless caused by fire, lightning, collision, derailment, or overturning of vehicle. The form does not limit coverage to where the sign is installed but covers wherever the sign may be. In this respect the policy does provide a floater coverage. This is important because occasionally the signs have to be taken to the shop for repairs.

Full insurance to value is contemplated and a full contribution clause is included in the form. Deductibles are used in many cases in order to eliminate the numerous small losses due to broken tubes and bulbs. Each sign insured must be listed specifically, showing the type of sign, the lettering, where it is installed, and the amount of insurance.

Specified perils policies are issued by some companies, and these may cover anything from fire and windstorm to a list of perils almost approximating an "all risks" policy.

Rates for the specified perils policies have been written as low as one per cent of the value annually, and the range of rates is upward to nine per cent for full coverage policies on an "all risks" basis. Because windstorm is an important hazard, the rates are higher in windstorm areas. Signs located inside buildings usually are more desirable than outside signs, because they are protected from the weather. Underwriters customarily secure reports on the locations of signs in order to avoid those that might be damaged by snow and ice falling from roofs and those that are so close to the sidewalk that they might be damaged by persons carrying ladders or poles.

Dealers' policies covering signs which they have installed and for which they have not been paid in full may be issued on a schedule basis, with new signs reported at periodic intervals. This is preferable to a blanket policy because the insurance company is certain to receive a full report of the value.

It is not considered good underwriting practice to issue a policy to a dealer covering purchasers of signs under certificates of insurance. The company has no chance to check the desirability of signs covered in this manner.

Salesmen's Samples—Commercial Travelers—Drummers

Many salesmen must carry expensive samples of their wares. Manufacturers, jobbers, and wholesalers need insurance protection for the goods in the hands of their salesmen.

The increased use of the automobile by salesmen has brought about a great change in the desirability of salesmen's sample floaters. Prior to 1920 salesmen's travel was mostly by railroad, and their goods were in the custody of the railroad or in their own hands. The chances of loss were remote if the salesmen were careful individuals. Today it is necessary at times for the salesman to leave his car and samples unattended. The principal hazard in connection with salesmen's sample floater insurance is that of theft from his automobile. Consequently, this hazard is covered only under restricted conditions.

A salesman's sample floater may be issued as a specified perils policy or on an "all risks" basis. The specified perils policy issued by many companies covers loss by fire, lightning, and transportation while the property is in the hands of the assured's salesmen within the continental limits of the United States and Canada. The policy also covers the property while it is being shipped to or from the salesman by common carrier. The coverage remains effective while the property is located in a hotel checkroom or while checked with a common carrier.

Theft coverage may be granted, but usually under restrictions. Theft from a checkroom or while in the hands of a common carrier may be limited to theft of the entire package. Many companies will not issue a policy covering theft from an unattended vehicle except when the property is in the hands of a common carrier. (When the property is stolen from an unattended vehicle while in the custody of a common carrier, the insurance company has a good chance of recovering a part or all of the loss from the carrier.) If property is stolen from a vehicle owned and operated by the assured or his salesman, there usually is little chance of recovery.

When theft from an unattended vehicle is covered, it is customary to limit coverage to theft from a fully enclosed and locked

body. Installation of burglar alarms or other theft preventive devices may be required on a vehicle used to carry expensive goods. The hazard of theft from automobiles is so great that the coverage requires the addition of considerable extra premium.

An "all risks" form is issued by some companies. The theft coverage is restricted in much the same manner as it is under a specified perils form. The principal difference between the two forms is in the coverage of the unusual loss by the "all risks" form.

Specified perils and "all risks" forms exclude coverage while the property is on the premises of the assured. They also exclude loss from breakage, marring, or scratching unless caused by fire and other specified perils, and they exclude loss from the perils of war. The policies contain the usual exclusions of loss from wear and tear, infidelity of persons to whom the property is entrusted, and inherent vice.

Patterns

Many industrial firms have large sums of money invested in patterns used in the manufacture of their products. When a portion of their work is subcontracted, it may be necessary for them to send their patterns to the subcontractor. The patterns may be insured under an inland marine policy while they are off the premises of the assured. (Patterns on the premises of the assured are not eligible for inland marine coverage.)

Coverage on patterns is not standardized but is written according to the needs of the assured. Most policies protect against fire, lightning, windstorm, explosion, smoke damage, and falling aircraft, and also against the perils of transportation while being shipped to and from the subcontractor's premises. Occasionally theft insurance may be desired if the patterns have a commercial value. It is seldom that an "all risks" policy is written on patterns.

Prospective assureds are investigated to determine the chances of a large loss and the susceptibility of the patterns to loss. If the assured uses only a few subcontractors and the patterns are concentrated at a few locations, the hazards can be evaluated with some degree of accuracy, and the rate can be based upon the fire and extended coverage rates at the subcontractors' locations. If the patterns are sent out to many different places and at irregular intervals, the problem of underwriting is more complex, and the

underwriter secures all the information available and uses his best judgment.

The difficulty and cost of duplicating the patterns are important factors. Coverage should be for the full value, and the policy usually contains a full insurance to value clause. The amount at risk would be the value of all the patterns that are away from the assured's premises at any one time.

Paraphernalia

Lodges and fraternal organizations frequently have several thousand dollars' worth of paraphernalia. This may be used in the lodge hall much of the time, but it also is taken out for ceremonies at other places. It is subject to transportation hazards and may be insured under an inland marine form of policy as property that is stored at a fixed location only incidentally to use outside the premises.

The hazards usually covered are fire, lightning, windstorm, explosion, smoke, falling aircraft, theft, flood, collision, and overturn of transporting vehicles. Policies take into account the individual needs of the assured; there is no standard form. Exclusions, which are much the same as in other floater policies, eliminate coverage from loss by wear and tear, infidelity of persons in whose custody the property is placed, war risks, electrical disturbances other than lightning, and moth, vermin, and inherent vice.

The property usually is scheduled in the policy, although the assured may be permitted to blanket the small miscellaneous properties in a single item. The property is required to be kept in a locked room when it is not in use, according to the terms of most policies.

Full insurance to value usually is required, and a 100 per cent coinsurance clause is attached to the policy. Rates depend largely upon the fire and extended coverage rates at the location where the property ordinarily is stored plus a loading to take care of the other hazards that may be covered by the policy. In the absence of an unusually high fire rate, many such policies are issued at rates of one and one-half to two per cent of the value.

Coin-operated Machines—Mechanical Sales Devices

Recent years have seen a tremendous increase in the use of coin-operated vending machines. Radios and television sets are located

in hotel rooms and may be used for the insertion of a quarter. Hot and cold drink and candy vending machines are spotted in railroad stations and in industrial plants where a dime will purchase anything from a bar of candy to a steaming hot cup of coffee. Weighing machines tell fortunes along with the amount of a person's avoirdupois. Millions of dollars are invested in this equipment and much of it is insured under inland marine policies. (Insurance companies do not insure gambling machines or machines operated in defiance of the law.)

There is not a great deal of difference between machines in susceptibility to the kinds of damage covered under an insurance policy. The heavier machines, such as the drink dispensers, are more difficult to handle than radios, and there may be more likelihood of damage in transportation. The transportation coverage usually includes protection against loss from collision or overturn of a transporting vehicle.

The policy should be specific regarding coverage during loading and unloading of the equipment. If it is not the intent of the insurance company to cover the loading and unloading hazard, the policy should so state in a carefully worded exclusion. On the other hand, if it is the intent to cover the hazard, it should be included as one of the specified perils. When loading and unloading damage is covered, it is a good idea to apply a deductible of $15 or $25 to this hazard in order to eliminate claims for minor scratches and dents that are in the nature of wear and tear.

Coverage at the location where the machine is in use usually includes protection against fire, lightning, windstorm, explosion, smoke, vehicles, and falling aircraft. Other hazards such as flood, water damage, and earthquake may be covered when the circumstances justify and if the assured is willing to pay a premium commensurate with the hazards.

Riot, civil commotion, strike, vandalism, and malicious mischief are not covered in most policies because of the extreme susceptibility of individual machines to such damage. Drink machines occasionally spill a cup onto the floor; some of the machines may jam, and an irate customer may damage the machine in retaliation. If there is danger of a catastrophe loss from any of these types of hazard that the assured would like to have covered, the policy may include a deductible approximately equal to the value of one machine.

Owners of the smaller machines, such as radios, may desire theft coverage. This may be granted on the entire machine, but it is seldom feasible to grant pilferage coverage. Neither is it desirable to insure money. There may be frequent attempts to steal money from the machines, and such coverage may result in a large number of small claims. Policies usually exclude damage to the machine resulting from attempts to steal the money. The coverage could be granted if the assured is willing to pay a sufficient premium to cover a multitude of small losses. Most operators of these machines have their own repair shops and they are in a position to take care of such damage as a part of their operating expense. These small losses may be eliminated by the use of a deductible on the theft coverage. The deductible may be five or ten per cent of the value of the machines, but not less than $25, if it is desired to keep the loss frequency at a reasonable level.

The rates for coverage on coin-operated machines are not standardized, and the company underwriter calculates the rate according to the hazard. The basic rate would be the fire and extended coverage rates for the type of property in which the machines are located. This requires the determining of an average rate if the machines are scattered throughout a community. A loading is then added to take care of the other hazards covered by the policy. Ordinarily there would not be a catastrophe hazard except where the machines are stored or repaired. The coverage may be continuous and may include the storage and repair locations as long as the storage is purely incidental to the regular and frequent use of the machines in other locations.

The underwriter needs to determine the maximum amount that might be exposed at any one location. If the amount is large, the fire rate at that location would have an important bearing on the final rate for the policy.

II. CONTENTS OR STOCK FLOATERS

Floater policies on stocks of goods cover property that is not under the control of the owner or that may be at one or more of many different locations. The stock may be intended for sale ultimately when it reaches its destination or when certain processing steps are completed, but it is not ordinarily for sale at the time of coverage. It may have been sold and be on its way to delivery; it may be undergoing processing or for other reasons be in the

hands of a bailee; or it may be property in a technical state of transportation, although in temporary storage during much of the policy term. Several of the important stock floaters are considered in this chapter.

Processing Risk Policies

Under the general heading of "processing risks" there are two types of insurable interest. The first is that of the owner of property in the hands of a contractor or subcontractor for the performance of some work or process. The second kind of interest is the legal liability of the contractor or subcontractor as bailee for loss or damage to the goods. The latter type is more accurately called "processor's liability" insurance and is a form of bailee liability coverage. It will be discussed in the chapter on bailee liability and bailees' customers policies. The actual property covered by a processing risk policy and a processor's liability policy may be the same, but the insurable interest of the bailee is much different from that of the owner and will be discussed separately along with other bailee coverages.

The function of a processing risk policy is to cover the goods against loss or damage when they are sent out by the owner to the premises of others for processing. The owner's fire insurance policies may not cover the property when it leaves the premises described in the fire policy, and the owner frequently feels that he cannot depend on the processor's having insurance to cover it. The owner's need is for a policy that will cover him for loss during the transportation of the goods to and from the processor's premises and that will also cover the goods while they are on the premises of the processor. The fact that such property is subject to a transportation hazard makes it eligible for inland marine insurance.

The eligibility of such property for inland marine insurance is recognized in the "Nation-Wide Definition" in Section I, E. 2. (p), which reads:

> Property in transit to and/or from and while waiting for or undergoing processing in bleacheries or fumigatories or on premises of dyesters, throwsters and other similar processors until delivered to storage warehouses or final place of delivery contemplated at the time the shipment was made. Provided, however, that such policies shall not cover bailee's property at his premises.

It has not been a simple task for the Joint Committee on Interpretation and Complaint to decide what "other similar processors"

might be. Interpretative Bulletin No. 104 contains a long list of processes that are considered to comply with the Definition and a list of those that are not. The Committee has followed the principle that there must be an actual transit exposure for property to qualify, and that it is not sufficient to give transit coverage in the insurance policy when there is, in fact, no transit exposure.

The Committee also has followed the reasoning that the mere assembly of parts does not constitute processing. Typical processes listed as coming within the intent of the processor's risk definition are the annealing of metals and plastics, chroming of metal, degreasing wool or leather, heat treating of metals, lithographing of paper, recapping of tires, sponging of cloth, and tanning of leather.

On the other hand, the Joint Committee has ruled as ineligible such operations as the making of nuts and bolts from steel or brass bars, the dehydration of vegetables, the assembling of parts of pumps into the completed unit, and the slaughtering of poultry or cattle. In many cases the individual circumstances may have been the determining factor, and the presence or absence of an actual transit exposure may have decided the Committee's action. The lists in Interpretative Bulletin No. 104 are offered for guidance and do not attempt to set an absolute line of demarcation.

A typical processing risk policy is the garment contractors floater. The name is somewhat misleading because it is a policy issued to the owner of the property and not to the garment contractor. The garment contractors floater has been standardized, and the coverage and procedures are typical for the insuring of the owners of other goods in the hands of processors. Policies are adjusted by means of optional coverages to fit the needs of the assured. Coverages and rates vary widely with the nature of the property to be insured, the location and number of the processors, and the fire hazards at the processors' plants.

The garment contractors floater is issued to a manufacturer of clothing to protect his goods while they are in the hands of contractors or subcontractors who are working on the garments. It is customary in the clothing business for a manufacturer to send the goods out to other plants for much of the work. Embroidery, buttonholes, pleating, putting on trimmings, inserting shoulder pads, and in some cases cutting and stitching material are all processes that may be done by specialists and not by the manufacturer himself.

The basic policy is a transportation policy, and the coverage while the goods are in transit is similar to that available under an annual transit form (see Chapter VII). The garment contractor's floater coverage is provided by an endorsement extending the transit policy to the premises of the contractors or subcontractors who are used by the assured within the United States.

The standard form covers property in transit against "all risks" of direct physical loss or damage from any external cause, subject to certain exclusions.

Property on the premises of contractors or subcontractors is covered against physical loss or damage caused by fire, lightning, sprinkler leakage, water damage (meaning actual contact with water), burglary, holdup, windstorm, hail, smoke, vehicle, and aircraft.

Burglary is limited to felonious entry by force and violence when the premises are not open for business, and there has to be visible evidence of the forcible entry. Holdup includes the forcible taking of property by violence or threat of violence, or by an overt felonious act which is committed in the presence of the custodian and of which he is aware at the time it occurs. For example, if someone came in and grabbed the property and ran, getting away with it from the presence of the people in whose care it was located, the loss would be covered. If it were stolen or disappeared without there being any actual knowledge of the theft at the time it happened, it would not be covered. Mysterious disappearance is not covered.

Optional coverages that may be added for the payment of an extra premium include protection against loss from strikes, riots, malicious mischief, explosion, boiler explosion, theft, and consequential loss.

Protection against loss by theft covers theft that could not be construed as burglary or holdup. The definition of "theft" specifically excludes loss resulting from conversion or dishonesty of the assured, contractors, subcontractors, or their employees, and from mysterious disappearance or shortage when there is no evidence that the loss was caused by theft.

In addition to the exclusions commonly found in inland marine insurance policies relating to war damage, loss resulting from infidelity of persons to whom the goods are entrusted, and loss due to the neglect of the assured, there are two exclusions designated

particularly for this policy. Loss resulting from delay or loss of market is excluded. The exclusion concerning gradual deterioration, moth, vermin, and inherent vice is expanded to exclude loss from chafing and rubbing.

Damage as the result of a consequential loss may be severe in the garment trades. For example, a manufacturer of men's suits may send the coats out to have the buttonholes put in. Since there are few buttonholes in the trousers, the trousers may not be sent out from the manufacturer's place of business or perhaps may be sent to a different contractor for other work. If the coats are destroyed, the trousers lose much of their value, because it may not be possible to sell them for as much independently as they are worth as parts of suits.

The garment contractors floater can be extended to cover this consequential loss to portions of garments resulting from the damage or destruction of other portions of the garments. Under this coverage, the company pays the difference between its liability for loss of the entire garments and the realizable value of the undamaged portions. The assured is obligated to try for at least twenty-one days to replace the lost or damaged portions before the company is obligated to pay the loss. The company has the option of taking the undamaged portions in case it pays a consequential loss. An extra premium is charged for this coverage.

Garment contractors business is divided into the following three divisions for rating purposes:

1. Women's wear, consisting of cloaks, suits, and dresses, including women's fur garments and fur-trimmed garments.
2. Men's and boys' wear, consisting of overcoats and suits, including men's and boys' fur garments and fur-trimmed garments.
3. Other wearing apparel, such as handkerchiefs, hats, ties, and gloves.

Certain articles that are considered clothing in a practical sense are excluded from the garment contractors rules because the hazards and customs of manufacturing them are different from those of the garment trades. Hosiery, handbags, purses, shoes, umbrellas, walking sticks, and jewelry, including costume jewelry, when being processed are not subject to the garment contractors rules and rates. (If eligible for insurance under an inland marine form, such

articles may be insured according to the judgment of the underwriter.)

Rates for garment contractors policies are quoted by the Inland Marine Insurance Bureau upon submission of a completed application by a member or subscriber company. Independent companies use much the same schedule for rating as that used by the Bureau. The rates are based upon the average fire insurance rate of all the contractors used by the assured for more than a period of thirty days during the year preceding the application for rate. If the assured has been in business less than thirty days, the rate is based on the average fire insurance rate of the contractors whom the assured intends to use. The rates are set up in brackets according to the average fire insurance rate, the amount of insurance, and the types of garments being made. The highest rated group is women's wear, on which the rate can be as high as six per cent of the value. From this figure the rates vary downward to ninety-five cents per $100 for the top bracket of a large policy amount on men's wear. All rates contemplate 100 per cent insurance to value, and the policy contains a full contribution clause applying to all goods in the hands of contractors at the time any loss occurs.

Film Floaters

Two types of property are insured under motion picture film floaters. The first type consists of motion picture positive films, which are used for projection. Many organizations that rent out motion picture films for educational or promotional purposes carry transportation insurance policies to cover the films when they are outside their own premises. The policies cover the films from the time they are put in the custody of the Post Office Department or in the hands of a common carrier, while they are being exhibited, and until they are returned to the assured. This is a form of transportation floater, which has been discussed in Chapter VII.

A person or firm with films in its custody for exhibition purposes may insure the films. This is really a bailee coverage and the general provisions of bailee insurance as discussed in Chapters XIII and XV would apply.

The second type of motion picture film insurance covers negatives and is more complicated. It is the insuring of the original negative during and after a motion picture production is being made. A full-length motion picture production may cost any

amount from a few hundred thousand to several million dollars. From the time the production starts until it is completed and the positive prints for projection are made, the entire cost of the production is wrapped up in the negatives that have been made. Should they be destroyed, it would be necessary to make the whole production over again and almost the entire cost would be duplicated.

Insurance on the negatives is not for the mere value of the film itself but for the cost of the production up to the time of the loss. The insurance may run into millions of dollars by the time the production is finished. The policy usually requires that weekly reports of values be given to the insurance company so that adequate reinsurance may be arranged.

The coverage under this type of policy is broad and is against "all risks of physical loss or damage from any external cause," subject to a few exclusions. The usual war damage exclusion appears, and this is important in its provisions relating to seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal trade. Another exclusion is designed for insurance on this type of property. It excludes loss or damage caused by or resulting from exposure of negative film to light, the use of developing chemicals, or the developing, cutting, or printing of film or other laboratory work, deterioration, atmospheric dampness, or changes of temperature.

Sound tracks and records are insured if they are part of the production. The policy may cover the property of the assured and also property for which he is legally liable. No coverage is provided for cut-out film, unused footage, or library stock.

In determining the amount of any loss, the cost of the story, scenario, music rights, continuity, permanent sets, owned wardrobe, and props are deducted because these items would not have to be reproduced in order to remake the film.

Each policy covers a specifically named production. The assured must give full information to the insurance company regarding the studios, laboratories, vaults, and cutting rooms used in connection with the production, the estimated cost (or periodical reports of value for a reporting form), and full information regarding ownership and any mortgagee interest.

Rates are based on the fire insurance rate at the place where the

films are located. A percentage loading is added to the fire insurance rate for the "all risks" coverage, and a further loading varies in amount from seven and one-half cents to thirty cents, depending upon whether the coverage extends beyond studios, laboratories, vaults, and cutting rooms, and on the exact conditions in the endorsements attached to the policy.

Fine Arts Dealers

Dealers in genuine antiques and fine arts are insured under broad coverage policies similar in their effect to the jewelers' block policy. This insurance is written by using a policy similar to the fine arts policy issued to individual owners of fine arts except that it applies to all such objects in the dealer's ownership or custody rather than to itemized property. Because of the peculiarities of fine arts insurance, this subject will be discussed with other fine arts insurance in Chapter XVII. It is mentioned here only to locate it in its proper place as a stock floater policy.

Wool Growers

The growers of wool need a continuous insurance coverage from the time the sheep are sheared until the wool reaches the purchaser. This may take several months, during which the wool may be in several warehouses. The time of layover in any location is likely to be indefinite, and it would be difficult for the owner to keep track of the exact location of the wool at all times and to arrange for specific location coverage each time the wool is moved. The wool growers' floater is basically a transportation policy and covers during transportation and while in warehouses incidental thereto.

The coverage starts at the shearing barn or corral where the wool is removed from the sheep, or where the pelt is removed from the carcass. It is continuous from that point as long as it is at the risk of the assured and until delivery to the premises of a buyer, or the warehouse designated by a buyer.

The coverage at the shearing barn, corral, or warehouse is against loss or damage directly caused by fire, lightning, cloudburst, flood, and explosion.

While on land conveyances, the wool is insured against loss or damage directly caused by fire, lightning, cloudburst, flood, collision, upset or overturn of conveying vehicle, or collapse of bridges. Flood is defined as the rising of navigable waters, but under special

circumstances the bureau may permit extending this to include overflow or breaking of boundaries of ponds, lakes, streams, or arroyos.

While water-borne, the wool is insured against loss or damage directly caused by fire, lightning, stranding, sinking, burning, or collision of vessel or craft with any external substance (ice included) other than water. However, all ocean or coastwise shipments are excluded.

Other coverages that may be added for the payment of an extra premium are tornado and windstorm, theft (either in transit or while at a shearing plant or warehouse), strike, riot, and civil commotion.

Policies may be written for auctioneers and warehousemen and for growers' associations as well as for growers. There must be a transportation hazard in order for it to qualify as an inland marine risk.

Rates vary by territory. They range from about $1.30 to $2.00 per $100 of value and contemplate full insurance to value.

Cotton

The insuring of baled cotton is similar in many respects to the insuring of wool. Policies cover from the time the cotton is weighed at the gin in the town adjacent to the plantation until the cotton is delivered to the purchaser. This delivery may take place many months later, and the delivery may be in a foreign country.

The insuring of cotton provided one of the early cases of ocean marine insurance coverage's being extended to a land hazard. Much of the cotton insurance is ocean marine insurance because the cotton is shipped by water to overseas ports. As a matter of fact, insurance on baled cotton usually is under a marine form of policy, without any designation of whether it is inland or ocean marine. Part of the cotton insured may be destined finally for a foreign country and part may be shipped to a mill in the United States.

The baling of American cotton long has been considered inferior to that done in other parts of the world. The result is that bales are more often damaged to a considerable extent in transit, and insurance companies have paid for this as a transit loss. It is called "country damage," although it may be largely transit damage resulting from poor baling. The fact that the insurers have

paid for such damage has retarded efforts to improve baling methods.

Cotton buyers' transit insurance. Cotton may pass through ownership by several persons between the time it is harvested and the time it is processed. Much cotton is purchased by professional buyers who hold the cotton for resale to manufacturers or exporters. These cotton buyers need insurance coverage to protect them from loss in case the cotton is destroyed by some accident or catastrophe. A special form of inland marine coverage has been developed for this purpose.

The cotton buyers' policy usually is continuous and permits the assured to report to the insurance company his acquisitions and sales of cotton. The coverage is against specified perils, including fire, lightning, tidal waves, overflowing rivers, collision, derailment, explosion, overturning of trucks, collapse of bridges, and the collapse of wharves. It also covers loss from the rising of waters due to torrential rains (except that cotton stored in the open is not provided this protection).

The assured is covered for loss of cotton which he owns or for which he is legally responsible under contract of purchase or sale. As to cotton that the assured has contracted to sell, he usually has the privilege of issuing certificates of insurance as soon as the cotton has been delivered to the land carrier that is to transport it.

The policy contains detailed provisions for determining the amount to be paid in case of loss. The amount of loss is based on market values as determined by quotations in the cotton markets. The insurance company has the right to replace the cotton if it desires to do so.

The policy provides for payment of a loss within fifteen days of receipt of notice of loss if the proofs of loss have been submitted as required by the policy. This is a short period of time compared to that provided for in other inland marine policies and is justified by the fact that a buyer might lose additional money if the loss payment were held up for the sixty or ninety days provided by many inland marine policies.

The cotton buyers' transit policy is one of the few policies that provide specifically for the settlement of a loss by means of a loan receipt.[2] A large proportion of the cotton losses occur while the

[2] See Chapter XXI for a discussion of the reason for use of a loan receipt in paying losses when there may be chances of recovery from a common carrier.

cotton is in the hands of common carriers. A payment of the loss might result in an impairment of the assured's and the insurance company's right of recovery against the carrier.

The cotton buyers' transit policy does not cover cotton that the assured is holding as a bailee or warehouseman. Neither does it cover any cotton for which any other carrier or bailee is responsible if the carrier or bailee has been released from his liability. This is an elaboration of the provision common to many inland marine policies that the coverage shall not inure to the benefit of any carrier or bailee.

Extensions of coverage and changes in the usual conditions of the policy may be made to suit the needs of individual assureds. Theft and nondelivery coverage may be written. Riot and civil commotion insurance is included on many policies.

The rates anticipate a relatively short term of coverage while the cotton actually is in transit. Rates are based upon ten days' or twenty-one days' coverage at the location from which the cotton is to be shipped, and adjustments are made in the rates when the periods of time vary from these average times. Rates also vary according to the hazards of loss at the place from which the cotton is to be shipped. Additional charges may be made if the shipment is by motor truck.

Cotton buyers' transit insurance is handled mostly by syndicates that specialize in this type of coverage. Because company inland marine underwriters do not often have occasion to handle the details of such coverage, this discussion has been confined to a brief summary of the needs of the assured and the means of meeting these needs.

Cotton spark insurance. Cotton spark insurance policies are issued to railroads to indemnify them for loss due to their legal liability as a result of fires in baled cotton. This is strictly a legal liability coverage. It applies to cotton on the premises of the compress companies listed in the policy.

The coverage does not apply to any cotton in the custody of the railroad company as a carrier or warehouseman. The coverage is a recognition of the fact that locomotive sparks are supposed to be the cause of many cotton fires.

The usual limits of liability are $500,000 for each compress location. The assured pays fifteen per cent of each claim, but claims not exceeding $100 are paid in full by the assured. Claims for which

the insurance company is liable are not to be paid until the assured's liability has been established by a court of last resort unless the insurance company consents to a compromise settlement.

The insurance company has the right under the policy of inspecting the locomotives of the assured. If the insurance company reports a locomotive in bad order, the assured is prohibited from using the locomotive around any of the premises listed in the policy until it is put in good order.

The premium for the basic $500,000 coverage is a flat amount depending upon the construction and other hazards to cotton at each location. These amounts vary approximately from $100 to $750 per location. Coverage above the $500,000 basic limit may be added for an additional premium. A credit is given if all the locomotives are oil-burning.

The spark coverage may be written as a separate policy or as an endorsement to other policies held by the assured.

Miscellaneous Floater Policies

An important and desirable feature of inland marine insurance is its facility for insuring any type of property that may be subject to a transit hazard. Modern transportation is so flexible that huge structures can be carried from their place of manufacture to any part of the country. The requirements of commerce and trade are such that these objects must be insured, and the inland marine underwriter has been able to fill the need. It is impossible to make a rate schedule to fit the many objects that must be insured; indeed, it would be impossible to list them. A few examples will serve to illustrate the need and the methods used by underwriters to fill it.

Huge electrical transformers for power stations are built at the factory and are transported by motor truck or by special railroad flatcar to the place of installation. The transportation may take a week or two and the value may amount to many thousands of dollars. Individual pieces of machinery, which is shipped frequently, may cost $20,000 to $50,000 each.

Machinery frequently is loaned or rented, and the insurance may cover from the time it leaves the owner's premises, while on location, and during return to the owner's premises. Exhibits of various kinds, such as expensive advertising pieces, are insured during transit to and from the place of exhibition, and also while at the exhibition. The hazards and length of each trip are different, and

the exposures at various temporary locations are seldom precisely the same. The susceptibility of the property to damage is calculated by the underwriter.

With the growth of television, there have been requests for insurance on television cameras, some of which may cost from $30,000 to $40,000. Many of them are not portable cameras in the sense that they can be carried easily from place to place, but they are demountable and are moved about and set up as the need arises.

The underwriter of an unusual transit risk determines his chances of a total loss from an examination of all factors involved in movement of the property. The chances of numerous partial losses are taken into account. From the combination of the two, he can arrive at what he believes is an adequate premium for the risk to be taken. If there is to be a location hazard at any point (as in the case of a television camera installed at a football stadium for the football season), the fire and windstorm hazards are taken into account.

It is in the handling of insurance for these unusual properties that the inland marine underwriter finds the greatest interest of the business, and it is here that his experience and judgment mean profit or loss to his company. There are no formulas or schedules for making rates for such policies, and a good underwriter is the company's hope of securing a satisfactory experience on them.

III. CONSIGNMENT AND SALES FLOATERS

A variation of the stock or contents floaters is the group of policies that insure goods in connection with sales of merchandise or equipment. They insure property from the time it leaves the premises of the assured until his interest ceases. The goods may be (1) on consignment, (2) under a conditional bill of sale, or (3) encumbered by a loan. The assured may be the seller or a lending agency.

Inland marine insurance is desirable because there is a transit hazard during shipment and it may be difficult for the assured to determine his values at individual locations as he would have to do for a fire and extended coverage policy. Some of these policies are basically transportation floaters and others are specially designed for the risk to be insured. They will be discussed with particular attention to the peculiarities of each.

Consignment Floaters

The "Nation-Wide Definition" states that a shipment "on consignment" shall mean "property consigned and intrusted to a factor or agent to be held in his care, or under his control for sale for account of another, or for exhibit or trial or approval or auction, and if not disposed of, to be returned."

Imports on consignment may be covered by an inland marine policy without restriction of time and place just so long as the insurance coverage includes the hazards of transportation. Domestic shipments on consignment for sale or distribution may be insured under an inland marine policy, according to the Definition, while in transit and for not more than thirty days after arrival at the consignee's premises or other place of storage or deposit. Goods on consignment for exhibit, trial, auction, or approval may be covered without limitation of time so long as they are in the custody of someone other than the owner or are being returned.

The coverage on goods on consignment would be the same as that under transportation policies discussed in Chapter VII. These policies go beyond the scope of transportation policies in that they also cover the property while it is temporarily at a fixed location. In that respect they are stock or contents policies.

The interest of the consignee is that of a bailee. The insurance of such interests will be considered in Chapters XIII and XV.

Installment or Conditional Sales—Deferred Payment

A large proportion of merchandise and equipment sales in this country are on a time payment basis. Everything from a radio to a million-dollar railroad train can be purchased on installments. In most cases the transaction is by means of a conditional bill of sale under which the purchaser does not acquire title to the property until the last installment has been paid. The seller has the right to repossess the property if the payments are not met.

The ultimate safety of the seller's money is dependent upon his being able to get the property back in case of default. Destruction of the property from any cause means that the seller can no longer take it back. In many cases the purchaser would be unwilling to continue payments if the property were destroyed. Therefore, the seller needs to insure the property so that he can collect from the insurance company in case the property is destroyed.

Inland marine policies may cover property sold under conditional contract of sale, partial payment contract, or installment sales contract. According to the "Nation-Wide Definition," leased property that is mobile in character may be insured under an inland marine policy if title remains in the lessor.

Inland marine policies covering such installment sales, partial payment, or leased property must cover the property while it is in transit, and they may not cover beyond the termination of the assured's interest. Policies may be issued to a retailer or manufacturer who sells or leases the property, and they also may be issued to banks or finance companies that finance the sales.

The property must be under sale or lease contract. Property that is sold on open account without a written contract is not considered eligible for deferred payment floater coverage.

There are three types of installment sales insurance coverage. Under the first type, the assured's interest is insured against loss by certain specified perils. If a loss that is covered by this policy occurs, the unpaid balance is paid by the insurance company and the purchaser's debt is cancelled, but the purchaser's interest above the unpaid balance is not covered.

Under the second type, the assured's interest is insured, but the assured agrees not to release the purchaser from his obligation and agrees to make all reasonable efforts to collect the money even though the property is destroyed. The purchaser receives no benefit from this policy. It is sometimes called the "contingent" form of installment sales floater.

The third type of coverage is a double interest form and not only covers the unpaid balance but also covers the purchaser's interest and pays him for his loss. In many states it is permissible for the insurance company to arrange with the seller to issue certificates of coverage to the purchaser when the purchaser's interest is insured. In all cases, however, the coverage expires with the final payment and the cessation of the seller's interest.

Most installment sales policies insure against loss by fire and lightning while the property is on the premises of the purchaser. Windstorm, explosion, riot, civil commotion, vehicle, smoke, and falling aircraft damage may be covered. While the property is in transit, it is protected against the perils usually covered under a transit policy, such as collision or overturn of the transporting vehicle, collapse of bridges, windstorm, flood, and fire and lightning.

Theft insurance may be provided during transit, particularly if the transit is partly or wholly by common carrier, but theft coverage is not often provided for property on the assured's own trucks. Burglary coverage on the premises of the purchaser may be provided, but the policy usually is worded to exclude loss by concealment or conversion on the part of the purchaser. The granting of conversion coverage might enable the assured to relax his care in the selection of customers.

When the merchandise consists of musical instruments, breakage coverage may be included applying to losses in excess of a deductible figure of $25. When the policy is issued to a jeweler, a broader form may be written to include loss of stones from settings. Burglary and theft may be included in such a policy, but seldom does it insure against loss by mysterious disappearance.

The installment sales floater fits in well with a jewelers' block policy, because the jewelers' block policy does not cover property sold on the installment plan. The jeweler needs the installment sales policy to complete his protection.

Exclusions are those common to transit policies and usually also exclude loss occurring on any premises owned or controlled by the assured. The clause excluding damage from artificially generated electrical currents is important in the case of radios and other electrical equipment.

Rates are based primarily on the average contents fire rates for the type of buildings in which the insured property is located. If the property being sold by the merchant consists of radios and household appliances, the average dwelling contents rate in the sales territory would be the basis of the rate. To this would be added a sufficient loading to take care of the transit hazards and of the other perils covered.

Rates for the "contingent" form, under which the assured agrees not to release the purchaser from his obligation to pay in case of loss, are usually from one-half to two-thirds of the rates for other types of policies. This is justifiable because the insurance company does not anticipate many losses under this type of policy. Losses would be paid only when the purchaser had disappeared following loss or when the seller was unable to collect from him.

Installment sales policies are written on an open basis with the assured making periodical reports, usually monthly, to the insurance company. If the policy covers the assured's interest only, the

monthly report states the amount of the unpaid balances. If the policy is a double interest form and covers the interest of the purchaser as well as that of the assured, the amount reported must be the total value of all the property covered by the policy. The rate stated in the policy is applied to the value reported, and the assured pays premium monthly according to the amount reported.

Underwriting of installment sales floaters takes into account the possibility of catastrophe losses. A severe windstorm or a conflagration could wipe out a large part of a community where the assured has sold quantities of merchandise. Policies usually contain a catastrophe limit, and they may also contain a limit per sale or per customer. The standing of the assured in his business is examined by the underwriter, because his customers probably are no better prospects for insurance than the dealer himself. The probabilities of loss depend largely upon the integrity of the assured and his care in selecting the customers with whom he will execute conditional sales contracts or leases.

Installation Floater

Like the installment sales floater, the installation floater involves property sold by the policyholder. The installation floater, however, covers only during a period of installation. The purpose is to insure the work and materials put in by the assured before the work is completed and accepted by the purchaser. The property covered is almost always a large installation that takes weeks or months to complete. Typical properties are electrical generators and power stations, elevators in skyscraper buildings, newspaper printing equipment, and air conditioning equipment in industrial or theatre buildings.

Smaller installations may be covered also when the assured is engaged in making many installations of a similar character in widely scattered areas. Typical of these assureds is a company that installs grain driers in grain elevators. The installation is not a lengthy job, but there is considerable exposure of materials and equipment from the time they leave the assured's factory until each unit is installed completely and tested.

The coverage under an installation floater policy is suited to the needs of the assured. Fire, windstorm, hail, explosion, riot, and civil commotion coverage frequently are needed. The installation may also require protection against loss by earthquake and perhaps

flood. Conditions of the policy follow those of the transportation policy, to which the installation form usually is attached.

A one hundred per cent coinsurance clause generally is included so that the assured will report full values and not take a chance that he will suffer only a partial loss. Exclusions are so worded that the company is not liable for careless work on the part of the contractor.

When many identical properties are insured for a contractor, a reporting form of policy may be written. The assured reports each installation and the values as they are accumulated. The premium can be based on the total value of all the installations made during the policy term. As each installation is accepted by the purchaser, its value is deducted from the amount at risk.

In the case of larger installations, it is customary to write a specific policy on each installation, for large values are sufficient to justify separate policies. The values are reported weekly or monthly as the work progresses. The assured's total investment in labor and materials is to be reported even though he believes that only a part of his investment could be destroyed by a catastrophe. The rates are based upon full insurance to value.

The rates are computed from two factors: the transportation hazard and the hazard at the location. The transportation hazard depends upon the susceptibility of the materials to damage during transit, the method of transportation, and the length of the haul. The rate for this is calculated in much the same way as for other transit policies.

The rate at the location is based upon the rates for similar coverages at the building where the installation is being made plus a loading for any hazards for which location rates are not available. A great deal of judgment is necessary in fixing the rate on a large installation for which there is no precedent. The rate for the hazard of loading and unloading is particularly troublesome, and many underwriters hesitate to give such coverage unless they know that the contractor is an expert in handling the type of equipment and materials that are going into the job.

Many installations have provisions for a test period of from thirty to ninety days before the purchaser is obligated to make payment. The coverage continues in effect during this period but must cease when the assured's interest ceases.

It is possible for such an installation to be paid for on an install-

ment payment plan. In such cases, there might be a need for a combination installation and installment sales policy. It is likely, however, that expensive installations would be financed through some financial institution and not by direct payment to the contractor. An installment sales policy may be written for the financing institution after the installation is complete and ready for acceptance by the purchaser.

Implement Dealers' Floater

It is customary for dealers in agricultural implements and farm tractors to demonstrate equipment and occasionally to permit trial use by a prospective purchaser. The values of some agricultural equipment, such as combines and farm tractors, may run to several thousand dollars per unit. The dealer needs a floater type insurance coverage on this equipment. He may have many thousands of dollars' worth of equipment off his premises, and his premises insurance coverage would not take care of a loss to such property.

An implement dealers' floater insurance policy is written as an inland marine form to cover the property that the dealer may have away from his premises and subject to loss. The form covers not only property owned and held for sale by the dealer but also equipment held in trust or on commission or consignment. The form usually is written to include property that the assured may have in his possession for alteration or repairs. In this respect the policy provides bailee coverage, although the principal amount at risk ordinarily is the property owned and held for sale.

The form is regulated by the Transportation Insurance Rating Bureau for mutual companies, but it is not regulated by the Inland Marine Insurance Bureau.

The hazards normally covered by such policies are those of fire, lightning, windstorm, explosion, vehicle, falling aircraft, riot, civil commotion, and transportation. Collision, overturn, and collapse of bridges or culverts constitute the principal transportation coverages. Theft of an entire machine or shipping package frequently is covered, but most forms exclude loss by pilferage as well as by embezzlement or conversion.

The territorial limits shown in the policy are those of the continental United States and Canada, and they may exclude Alaska and the Yukon Territory. The exclusions provide that the policy does not cover in any place of business owned, leased, or controlled

by the assured. This exclusion is necessary to make the form acceptable according to the "Nation-Wide Definition." The exclusion also may provide that the coverage does not apply at any place of sale, display, or storage at which the insured property has been situated for more than thirty consecutive days.

The form may be extended to include coverage on home appliances and hardware. This is not intended to cover ordinary hardware, but rather the heavier type of home appliances, such as refrigerators and stoves, that may be part of the stock of an implement dealer.

Rates for the coverage vary somewhat according to the property to be covered. The rate is somewhat higher for home appliances and hardware because of their greater susceptibility to damage. A small dent or scratch acquired during delivery would not affect the sale of a plow or tractor, but the same injury to a refrigerator or stove might require repair of the damage and a resultant claim.

Rates average less than one per cent annually for the coverage. This low rate is possible because there is no coverage at the storage location of the assured. The coverage is essentially a transportation coverage outside the assured's premises.

It is important that the assured understand thoroughly the nature of the coverage and the fact that it covers only outside his own premises. Many companies write the form only if the fire and extended coverage policy on the stock of merchandise is in the same company. This eliminates any difficulty about which company pays a loss if it occurs during the transition period from storage to a transit condition.

When the amount of repair business is large, companies sometimes issue a separate policy covering the bailee liability so that an accurate report can be kept on the exposure under the bailee hazard. The amount of insurance under the implement dealers' form is the estimated largest amount that will be needed at any time during the year.

"Floor Plan"

During the middle 1940's there arose considerable interest in the insuring of merchandise in the hands of dealers under a "floor plan." This is an arrangement by which merchandise or equipment is placed in the hands of a dealer by the manufacturer or wholesaler. Money to pay for the goods is loaned to the dealer by

a financial institution, such as a bank. The property is specifically encumbered by the loan. This arrangement had been in use for a number of years in connection with the distribution and sale of automobiles, and the practice has spread to the merchandising of such other equipment as household appliances.

In its Interpretative Bulletin No. 98, issued April 10, 1942, the Joint Committee on Interpretation and Complaint ruled that the insuring of property under "floor plan" on an inland marine policy is not in accord with the "Nation-Wide Definition," and stated:

> A marine or inland marine form of policy may not be issued to cover property for sale while in the possession of dealers under the so-called "floor plan" or any similar plan under which the dealer borrows money from a bank or finance company with which to pay the manufacturer for the property. Such transactions constitute a loan of money and are not installment sales.

This decision was reaffirmed in Interpretative Bulletin No. 115, issued September 18, 1945. The reasoning of the Joint Committee appears to have been based upon the fact that such property would be at a fixed location for an indefinite period and would not be subject to a transportation hazard. Inasmuch as it could not be considered an installment sale, there was no place for it to fit into the permissible inland marine coverages as specified in the "Nation-Wide Definition."

Subsequent to the action of the Joint Committee, several states amended the "Nation-Wide Definition" to permit inland marine insurance on property encumbered under a "floor plan." Some of the amendments outlined the following restrictions applying to such policies:

1. The property must be identifiable specifically as encumbered to the bank or lending institution.
2. The dealer's right to sell or otherwise dispose of such merchandise is conditioned upon its being released from encumbrance by the bank or lending institution.
3. The policy must cover in transit and not extend beyond the termination of the dealer's interest.

These limitations prevent an insurance company's issuing an inland marine policy to cover on a general stock of merchandise, even though it may be encumbered by a chattel mortgage or loan. The property to be insured must be identifiable specifically as that which is encumbered and upon which the money is loaned.

The inland marine rating bureaus assumed jurisdiction over the

form and promulgated rates, rules, and forms that now are standard for the bureau members and subscribers. In addition to the limitations set up by the states, the bureaus specified that their rules would not apply to motor vehicles, water craft, aircraft, livestock, jewelry, or furs.

It also was specified that a dealer under a "floor plan" policy shall not include an individual, firm, or corporation engaged in manufacturing, blending, aging, rectifying, or any other form of processing for the trade. It was also specified that the policy must name the type or class of merchandise to be insured; the phrase "general merchandise" or any other similar term is not permitted.

Policies may be issued to cover either the single interest of the dealer, the single interest of the lending institution, or the two interests together under one policy. When the interest to be insured is that of a dealer or when both the dealer's and the lender's interests are covered, the policy provides that the insurance company shall not be liable for a greater proportion of any loss than the amount of the assured's interest in the merchandise bears to the value of the merchandise.

Lending institutions also may secure a form which provides that the insurance company shall not be liable for any loss unless the interest of the assured in the lost or damaged merchandise has been impaired, and then only to an amount not exceeding the extent of such impairment or the amount of outstanding balance on the merchandise lost or damaged, whichever amount is less. This form is written at about seventy-five per cent of the rates applying to coverage for the full value of the goods.

The coverage granted under the "floor plan" policy is interesting because it is the first instance in which "all risks" coverage has been made available on mercantile stocks (other than jewelry stocks).

The exclusions follow to a large extent those found in other "all risks" types of policies, but some of them are specially designed for this policy. War damage is excluded, as well as damage to electrical appliances or devices from artificially generated current unless fire ensues, and then only for direct loss or damage caused by such ensuing fire. There is an exclusion referring to mechanical breakdown, inherent vice or defect, wear and tear, and gradual deterioration.

A specific exclusion designed for this type of policy refers to loss

or damage resulting from delay, loss of market, bankruptcy, foreclosure, or similar proceedings.

The exclusion relating to conversion is detailed, and refers to misappropriation, secretion, infidelity, and any dishonest act on the part of the assured or other party at interest as well as to conversion. This exclusion does not apply to loss or damage resulting from infidelity and similar dishonest acts if the loss occurs while it is in the hands of a carrier for hire.

Breakage of glass or similar fragile merchandise is excluded unless caused by fire, lightning, explosion, cyclone, thieves, or the overturning, derailment, or collision of a conveyance in which the merchandise is being transported.

Except while in transit, loss or damage resulting from rain, hail, sleet, snow, or freezing while the merchandise is in the open is excluded.

There is an exclusion of loss or damage caused by or resulting from flood, which is defined as meaning rising waters, except while in transit. This exclusion may be deleted at an additional charge to be determined by the rating bureau in each specific case.

The rates are based primarily on the average fire insurance rate at the location covered. The windstorm or extended coverage rate, whichever is lower, is added to the average fire rate, and a monthly loading of two cents per $100 is added for the other hazards. When locations are not specified, the rates are about ten cents per $100 per month for the entire coverage.

The policies are written on a reporting basis. Under the single interest form, the assured must report the total amount of outstanding balance. For the double interest form, the assured must report the total value of all property covered as of the last business day of the preceding month. Failure on the part of the assured to render such reports within a month renders the policy null and void in so far as it concerns any amount in excess of the last report. There is provision for correcting an error or omission if prompt notice is given to the company as soon as the error or omission is discovered. The company has the right to audit the books of the assured to determine the accuracy of the reports.

The clause regarding valuation in case of loss provides that merchandise that has not been sold by the dealer shall not be valued in excess of the purchase price plus transportation charges. In regard to merchandise that has been sold by the dealer but has

not been delivered, the value is the net selling price of the dealer after all allowances and discounts. These valuation clauses are both subject to a restriction that the value shall not exceed the cost to repair or replace the merchandise with material of like kind and quality.

Accounts Receivable Insurance

A large part of the assets of commercial establishments may consist of accounts receivable. The destruction of the records might make it difficult or impossible to collect these accounts, because the firm could not determine who owed them money. Fire insurance companies offer insurance against destruction of such records by fire, windstorm, and the other hazards usually insured against by fire insurance companies. Casualty insurance companies sell insurance against the loss of such records by theft or burglary.

Some policyholders feel that they need a broader protection than that available through the fire and casualty departments of the insurance companies, and they also prefer to have the coverage provided in a single policy. Inland marine underwriters have been willing to provide a broad coverage on such records. In most cases this is not a transportation coverage because the records remain at one location and are not subject to transit hazards. Many state insurance departments do not recognize accounts receivable insurance as an inland marine coverage, but it is written as inland marine insurance in some states.

Accounts receivable insurance is really a consequential loss coverage. It is intended to cover, not the physical value of the records themselves, but the amount of money the assured would be unable to collect because the records were destroyed.

The coverage depends upon the needs of the assured and the ideas of the underwriter regarding this particular coverage. Some policies cover against loss or damage as a result of specified perils, which may include fire, lightning, windstorm, falling aircraft, vehicle damage, smoke from faulty operation of heating equipment, flood, explosion, and burglary.

A frequently written form is a combination "all risks" and specified perils type of policy that covers destruction of or damage to the records from any cause. It covers disappearance of the records as a result of certain specified perils such as fire, windstorm,

earthquake, riot, or flood. (It does not cover disappearance due to theft.) A distinction is drawn between damage to the records and disappearance of the records. The insurance companies usually are willing to grant a broad coverage against destruction of or damage to the records, but they are wary of providing disappearance coverage unless the disappearance is the result of some specific hazard. Underwriters feel that an assured should take precautions to see that the records are protected from theft or disappearance. There is also the possibility that disappearance insurance would encourage dishonesty and make it profitable for an assured to bring about a disappearance if there were any defalcations.

The assured is required to keep the records in a safe or vault except when the records are actually in use. The policy usually describes the safe or vault.

Loss settlements are a problem if the records are destroyed to such an extent that the assured cannot determine accurately what his uncollectible accounts are. The policy usually provides a method of estimating the accounts receivable based upon the experience of the previous year. The assured is obligated to make collection efforts to the best of his knowledge and ability. The insurance company pays any unusual collection expenses that may be incurred in reducing the amount of the loss. The insurance company pays any extra expenses incurred in conditioning the records so that they can be read and used for collection purposes.

The rates for the coverage vary according to the safe in which the records are kept, the construction of the building, the fire protection, and the coverage provided by the policy. The rate frequently is about one-half of what the rate would be for similar coverage on actual goods. That is, if the rate on the contents of the building is $1.00, the rate on the accounts receivable might be about fifty cents. This rate is applied to the amount of outstanding accounts receivable. Policies usually are written on a reporting basis. The assured reports at the end of each month the amount of his outstanding accounts receivable and pays a premium on that amount.

Questions

1. What principles are followed in the "Nation-Wide Definition" in the conditions under which floater policies may cover property?

2. What are some of the hazards to which contractors' equipment may be subject?

3. Why does the insurance company want to be notified if insured theatrical property is placed in storage?

4. Why does the radium floater policy require that notice of loss be given by telephone or telegraph?

5. What is a major cause of loss under salesmen's sample floater policies?

6. Outline the procedure used by inland marine underwriters in arriving at the rate to be charged for a floater coverage for which there are no manual rates.

7. What is meant by a "consequential loss" under a garment contractor's policy?

8. Why are the insurable values so high under a motion picture negative insurance policy?

9. Discuss the cotton buyers' and the wool growers' need for a continuous insurance coverage from the time the cotton or wool is prepared for market until its arrival at destination.

10. Why do inland marine underwriters feel it is unwise to provide conversion coverage in an installment sales floater?

11. Distinguish between an installment sales floater and an installation floater.

12. What is the "floor plan" arrangement for financing goods in the hands of a dealer?

13. Compare the coverage under a "floor plan" policy with that under a jewelers' block policy.

14. Why are inland marine insurance companies prohibited by some states from writing accounts receivable insurance?

PART V

Bailee and Bailees' Customers Coverages

CHAPTER XIII

Bailees' Customers Insurance

Bailment—Liability of a Bailee

Bailment is the delivery of property by one person to another to be held by him for some special purpose. The purpose may be the safekeeping of the property, or it may be the performance of some work upon the property. In bailment, title to the property does not change, and there is no intention that the title will change in the future. The parties to the act of bailment are the "bailor," who is the owner or a person in rightful possession before the bailment, and the "bailee," who receives the property and is to perform the service.

Bailment ordinarily is distinguished from two other similar situations in which property is turned over to someone other than the person holding legal title.

The first is a conditional sales contract in which the property is turned over to another party, but in this case it is intended that the title will pass to the other party upon the completion of certain conditions, such as the payment of the balance due.

The second situation to be distinguished from bailment is one in which the owner retains some control over the property, as in a master and servant relationship. In a bailment, the owner relinquishes control of the property, and the bailee has entire control of what is done with the property while it is in his custody. For example, a laundress working under the direction of her mistress is not a bailee, because the mistress is in a position to direct the washing of the clothes. If the laundress takes the clothes with her to her home to do the work according to her own wishes, she becomes a bailee.

There are three kinds of bailment.

The first is a gratuitous bailment for the benefit of the bailor, such as would exist when a housewife agrees to keep her neighbor's cat or plants while the neighbor is away. There is no compensation

involved and the benefit is entirely to the bailor—the owner of the property.

The second kind of bailment is gratuitous for the benefit of the bailee. An example of this would be a friend's borrowing a lawn mower. Again there is no payment, but the benefit is entirely to the bailee.

The third type of bailment is a bailment for hire and for the mutual benefit of both bailee and bailor. Typical examples are the laundering of clothes, the storage of furs, and the repairing of jewelry. In such cases the bailor receives the benefit of the service performed and the bailee receives the benefit of the charge he makes for the service.

The bailee has certain responsibilities to the bailor for the safety of the property. This responsibility is not clear-cut, and it may vary according to the circumstances. The responsibility of a bailee was described by one court in these words: ". . . the bailee thereunder was bound to exercise ordinary care of the subject matter of the bailment, and is liable for ordinary negligence. Ordinary care means such care as ordinarily prudent men, as a class, would exercise in caring for their own property under like circumstances. . . ."[1]

Ordinary care varies according to the circumstances and the nature of the property. A bailee who is storing property or performing a service gratuitously would not be required to exercise so high a degree of care as a bailee for hire. A greater degree of care would be required in the storage or handling of expensive jewelry than would be required in the care of ordinary laundry. The bailee must anticipate the hazards to which the property is subject, and exercise care commensurate with the risk. For example, he must take precautions against theft when the nature of the property is such that it is a temptation to thieves.[2]

The care required of a bailee is less than that required of a common carrier. As explained in Chapter VI, the responsibility of a common carrier is so great and he must exercise such extraordinary care that he becomes virtually an insurer of property in his possession. The bailee, in contrast, is required only to use the

[1] Fraam v. Grand Rapids & Indiana Rwy. Co., 161 Mich. 556, 126 N. W. 851 (1910).

[2] See Peet v. Roth Hotel Co., 191 Minn. 151, 253 N. W. 546 (1934).

care an ordinarily prudent man would exercise under the circumstances in the handling of his own property.

The common carrier is liable for loss by fire (except in the rare instance when he can prove that it was an "act of God" or act of the public enemy), whereas the bailee is responsible for loss by fire only if he has been guilty of negligence. If the bailee can prove that he took all reasonable precautions, that his fire protection equipment was in good order, and that he was in no way responsible for the loss by fire, he is not liable for the loss. On the other hand, it has been held that it was negligence for a dry cleaner to leave his truck unguarded during the time garments were stolen from the truck.[3]

Although the bailee must be guilty of negligence for the bailor to collect the value of lost or damaged property, the courts generally have taken the view that the bailor can make a prima facie case of negligence by showing that the property was not returned or that it was returned in damaged condition. This appears reasonable, because the bailor would have little chance of learning what happened to missing property that disappeared while in the hands of a bailee. The bailee is the only one who has a reasonable opportunity to determine the cause of the loss, and ordinarily he must show that he exercised due care. The rule has been stated that, "Where property is in the exclusive possession of a bailee for hire and is damaged in a way that ordinarily does not occur without negligence, the burden of proof is upon the bailee to show that the injury was not occasioned by his negligence."[4]

The liability of a bailee can be extended in several ways. He may agree in an oral or written contract to assume certain additional liabilities. For example, a dry cleaner may assume responsibility for loss by fire and windstorm by so stating in the receipt he gives the bailor when the clothing is received. There is almost no limit to how far the bailee can extend his liability by contract with the bailor.

The bailee may extend his liability by advertisement. It is common practice for laundries and dry cleaners to advertise that they purchase insurance for the benefit of their customers. They also may advertise that they assume certain responsibilities for the

[3] See More v. Fisher, 245 Ill. App. 567 (1927).

[4] Braman-Johnson Flying Service, Inc. v. Thomson, 167 Misc. 167, 3 N. Y. S. (2) 602 (1938).

safe return of property entrusted to them. The writing of a letter to the bailor concerning the care to be given the property might result in the assumption of additional liability.

In addition to the deliberate extensions of liability just described, the bailee may inadvertently extend his liability by doing something outside or beyond the bailment contract. If the bailment contract provides for the storage of the property in a specific building or location and the bailee stores it in another place, from which it is lost, the bailee may be held absolutely liable for the loss, even though the circumstances are such that a bailee ordinarily would not be held liable.

In a case involving loss of a fur coat, the owner had asked the bailee to make certain repairs, and the bailee sent the coat to a subcontractor to make them. The coat was lost while in the hands of the subcontractor. The court held that the sending of the coat to the subcontractor without the knowledge of the bailor terminated the bailment contract, and the bailee was held liable for the value of the coat.[5]

It is considered to be against public policy to permit a person to contract away his entire liability for negligence. The courts will not sustain a contract in which the bailor agrees to waive all his rights against the bailee for negligence.

Many garages attempt to limit their liability by posting signs to the effect that the proprietor is not liable for loss by fire or theft. Such signs are not effective in relieving the proprietor of his liability for loss by fire or theft when he is guilty of negligence. Even a contract that is assented to by the bailor is of questionable effect when it attempts to relieve the bailee of his entire liability for negligence.

It is possible for the bailee to limit the amount of his liability. The one type of restriction that has stood up reasonably well is a limitation on the value of the property. It is common practice in certain types of bailment contracts for the bailor to agree that for the purposes of the contract the value of the property is limited to a specified figure. A higher charge is made when the bailor wishes to have a higher value inserted in the contract. This type of limitation has been held binding on the bailor except in some cases where gross negligence has been proved on the part of the bailee or where the bailment contract has been terminated by some

[5] Aetna Cas. & Surety Co. v. Higbee Co., 80 Oh. App. 437 (1947).

act of the bailee (see the third preceding paragraph). The effect is similar to that of the released bills of lading used by common carriers to limit the amount of their liability in case of loss. The limitation of value as it applies to fur garments and furriers' customers policies will be given more detailed consideration in Chapter XIV.

Insurance by Bailor of Property in the Hands of a Bailee

The bailor may insure his property under all circumstances, including while it is in the custody of a bailee. The most common form of such insurance is that in connection with household goods and clothing. The household goods fire insurance policy covers to the extent of ten per cent of its amount on property away from the location named in the policy, including while in the hands of a bailee.

The personal property floater (an inland marine form to be discussed in Chapter XIX) covers all the property of the assured in all locations, including while it is in the hands of a bailee. This coverage by the bailor is incidental and is not intended primarily to cover property in the hands of a bailee.

The garment contractors floater policy discussed in the preceding chapter is an example of a policy purchased by a bailor specially to cover his property while it is in the hands of a bailee. Persons who have property in storage in a furniture warehouse frequently buy an insurance policy to cover the property while in the hands of the warehouseman, who is a bailee. Commercial and industrial concerns ordinarily carry insurance on property stored in a warehouse, even though the warehouseman, as a bailee, has some responsibility for the safety of the goods. The bailor considers such insurance to be necessary because the values are large and the bailee is liable for the loss only if there is negligence on his part. It is not customary for warehousemen to insure property for the benefit of the bailor. Therefore, the bailor must carry his own insurance if he desires protection.

Bailee Liability Insurance

The bailee may purchase insurance to protect him against his legal liability for loss of bailed goods. This is similar in its nature to the motor truck cargo insurance purchased by a truckman to

protect him from loss as a result of his liability as a carrier for damage to the property of others in his possession. The legal liability of a bailee may not be insured under an inland marine policy unless the bailed property itself is eligible for inland marine coverage. For example, a warehouseman may wish to protect himself against his liability for damage to a stock of paper stored in his warehouse. Because there is no transit hazard, it is not proper to issue an inland marine policy to cover the warehouseman's liability. This is a subject for casualty insurance.

A furniture warehouseman may move some furniture from a customer's house to his own warehouse for a period of a few days, after which the furniture is to be moved on to a new location. This storage is incidental to the transit exposure, and an inland marine policy may be issued to cover the liability of the furniture warehouseman during the entire period, including the storage period. (The "Nation-Wide Definition" provides that an inland marine policy may not cover such storage beyond a period of thirty days.)

Bailees' Customers Insurance

Customers of retail establishments, such as laundries, dry cleaning plants, and fur shops, expect their property to be returned in good condition regardless of liability. A merchant who refuses to reimburse customers for loss of their property because he is not liable for its loss would soon find himself without customers. Processors who deal with the public have found it necessary to make good all legitimate claims. They have turned to the insurance companies for protection against the larger losses, which they cannot assume as part of their operating costs. The spoiling of a coat due to some error in processing or the misdelivery of a bundle of laundry is considered a business loss that the processor can stand out of his operating expenses. He needs insurance, however, to protect him if his plant is burned down or if an entire truckload of goods is stolen.

The hazard in connection with a laundry or cleaning establishment is primarily a transit hazard. The property is picked up by the bailee's driver and is carried to the plant at the risk of the bailee. It is at a fixed location for only a limited period of time, after which it is again placed on the truck for delivery to the owner. The only practical way to insure the bailee's liability and the

customer's interest is to issue a single policy covering the property while it is in the hands of the bailee and at his risk.

The "Nation-Wide Definition" recognizes this and provides for insurance under bailees' customers policies, subject to the exclusion that they must not cover the bailee's property at his own premises. The furriers' customers policy goes a little further and insures during a period of actual storage, but the theory is the same and is based on the fact that the bailee is insuring what is essentially a transit hazard, with storage incidental to the transportation and for an indeterminate period.

Laundry and dry cleaning insurance. The bailees' customers insurance policy provides direct coverage against loss or damage from the perils specified in the policy to property that the assured has accepted for the type of processing described in the policy. Payment of a loss is not dependent on the legal liability of the assured, but any loss from the perils insured against is paid up to the limit in the policy.

Bailees' customers insurance is not standardized, and insurance companies issue many variations of this coverage. Policies are tailored to fit the needs of individual laundry and dry cleaning plants, but the basic provisions of most policies are similar. The property covered by such a policy is that accepted by the assured from his customers for cleaning, renovating, pressing, dyeing, repairing, or laundering. Processing charges that the assured is unable to collect because of a loss may be insured also. Many companies have separate insurance policy forms for dry cleaning plants and exclude dry cleaning from their laundry forms. The fire hazard in a dry cleaning plant may be much greater than in a laundry. Underwriters feel that they must have an opportunity to appraise the hazards of dry cleaning on its own merits.

The insured property is covered while in the custody of the assured (1) at his premises, (2) at the premises of his agents or branch stores, and (3) while in the course of transportation. The locations of the assured's premises are specified in most policies. Agents' premises usually are not specified if they are not under the control of the assured. Some policies give seventy-two hours' coverage at unnamed locations owned, rented, or controlled by the assured, in order to give the assured time to report any new locations he may establish.

Perhaps the greatest variation between bailees' customers policies

is in the limits of liability. Some policies specify (1) limits of liability for each location named in the policy, (2) a limit for any unnamed location that may be covered under the seventy-two-hour automatic provision, (3) limits for any locations occupied by agents, and (4) limits on any one vehicle or in the hands of any one messenger. Policies may contain limitations on the amount that will be paid for any one bundle of laundry or any one suit or article of dry cleaning. In sharp contrast, a few companies issue policies containing no limits whatever except that the amount paid will not exceed the actual cash value of the property. This is one of the few inland marine policies (and in fact one of the few insurance policies of any kind) in which insurance companies may write coverage without specifying in the policy a limit of liability.

A policy without a limit of liability obviously is desirable from the standpoint of the assured because he cannot control the total value he may have in his custody. A temporary breakdown in his plant may cause goods to pile up and may increase his liability several times over the normal amount. On the other hand, such an increase in liability is dangerous to the insurance company and might result in a loss far beyond what the company anticipated. Many insurance companies try to compromise between the two extremes of (1) no limit of liability and (2) rigid limits on all parts of the coverage. They set a catastrophe limit high enough to cover any loss that can be foreseen and at the same time within the limits of what the company can afford, considering its reinsurance and its own capacity.

The perils covered in the usual bailees' customers policy are much the same as in transportation policies and include fire, lightning, explosion, collision or overturn of transporting conveyance, theft, burglary, holdup, tornado, cyclone, windstorm, flood, sprinkler leakage, transportation risks by common carrier or mail, earthquake, strike, riot or civil commotion, and confusion of goods resulting from any of the above perils.

The explosion coverage differs from that of some inland marine policies in that it is not restricted and includes steam boiler explosion. The windstorm coverage is broad, covering damage from hail, rain, sleet, and snow whether driven by wind or not. The "confusion of goods" provision is intended to cover losses that might result from inability to identify property after it has been in the confusion attendant upon a fire or other loss. Flood coverage

may be eliminated or restricted if the plant is subject to the hazard of frequent flooding.

The theft coverage almost always is restricted, either in the coverage clause or in the exclusions. Theft of individual pieces or articles is excluded from most laundry policies unless the theft is the result of burglary or holdup. This is to eliminate claims from loss of small pieces as a result of misplacing or from infidelity of employees. Most dry cleaning policies and some laundry policies exclude theft of goods left on a vehicle overnight unless the vehicle is locked in the assured's private garage or some other building occupied by the assured. Policies may contain deductible clauses applying to the theft hazard, or they may provide that theft from within a vehicle is covered only if the vehicle is locked at the time of the loss and there is visible evidence of forcible entry. This is considered necessary in some cities in order to encourage the assured to lock his trucks in neighborhoods where theft is frequent.

Several of the exclusions in the bailees' customers policies are specially designed for this type of coverage. Loss or damage that occurs while goods are in the custody of any other laundry or dry cleaner is excluded unless it is specifically assumed by endorsement. This is necessary in order to give the insurance company an opportunity to examine any other plants where the goods might be processed.

Goods held in storage usually are excluded. This exclusion is worded to apply to any goods on which the customer gives storage instructions or on which the assured makes a storage charge. Occasionally a bailees' customers policy is endorsed to provide storage coverage. If the assured has a large amount of garment storage, it may be desirable for him to buy a furriers' customers policy to cover the storage operation. In this case, he would have two policies, one a bailees' customers policy covering laundry or dry cleaning operations and the other a furriers' customers policy on the storage portion of his business.

It has been customary for insurance companies to put in an excess insurance clause, which attempts to make the policy excess insurance over any other insurance carried by the bailee and also over any other insurance carried by the bailor. This practice has been nullified largely by the "Agreements of Guiding Principles," which will be discussed in Chapter XXI. Current practice is to

make the excess value clause apply only to insurance purchased by the assured (the bailee) and to allow the bailees' customers policy to be primary insurance as far as insurance purchased by the customer (the bailor) is concerned.

Even though this is a specified perils policy, many companies put in an exclusion applying to loss resulting from misdelivery, or careless destruction of goods, or other unaccountable loss when there is no evidence that the loss resulted from one of the perils insured against. This exclusion does not change the terms of the coverage, but it does help to make clear to the assured the intent of the coverage, and it avoids many misunderstandings.

The assured is permitted to adjust small losses (usually less than $100 in the aggregate) with the customer in accordance with the policy terms and to collect from the company upon presentation of a claim and all the facts. The insurance company has the option to adjust losses with the customers or with the assured. In the case of large losses, the insurance company frequently takes over the task of adjusting with the customers and relieves the assured of this task.

Many dry cleaning policies and some laundry policies contain a provision that all thefts for which claims are made must be reported to the police department. Occasionally an assured is reluctant to report a theft to the police because he suspects an employee and does not want to embarrass him.

It is customary for bailees' customers policies to be written on a continuous basis, with the premium payable monthly. The premium is based upon the gross receipts of the assured, and the rate is expressed in cents or dollars per $100 of gross receipts. The assured is obliged to keep an accurate record of his gross receipts and report them to the company. Uncollected gross receipts must be reported because the work they represent has been done and the gross receipts are intended to serve as a measure of the amount of processing the plant has done. Many companies include a "full reporting" clause in their policies similar to those used in fire reporting forms. A typical clause reads:

> Liability under this policy shall not in any case exceed that proportion of any loss hereunder, which the last reported gross receipts bear to the actual gross receipts for the period included in the said last report.

In the absence of such a clause, the company would be liable for

the full loss even though the assured was under-reporting unless the company could prove fraud in the reporting by the assured.[6]

There are as many different methods of calculating a bailees' customers rate as there are inland marine underwriters. Each has his pet formula, but certain basic ideas prevail in all of them. The first problem is to determine the value of the customers' goods for which the assured may be liable. Fortunately there seems to be a fairly constant relationship between the value of the average laundry bundle or dry cleaning package and the charge made for it. This will vary among different sections of the country, and even among sections of a city, depending upon the wealth of the community, but the relationship stays reasonably constant within these limits. Many underwriters figure that laundry and dry cleaning bundles are worth from 20 to 30 times the processing charge. The value of a dry cleaning bundle may average a little higher than that of a laundry bundle in proportion to the processing charge.

The underwriter is able to calculate the total value of the goods that go through an assured's plant in a year by multiplying the annual gross receipts by 20 or 30 (depending upon what figure he decides upon after consultation with laundrymen and dry cleaners in his part of the country). The next step is to determine how much of this value may be in the plant at any one time. Underwriters find out from each plant operator how long it takes him to process the average bundle. If the average time is 5 days, in 365 days the plant will have 73 complete turnovers of goods. The total value of the goods in a year's time should then be divided by 73 to get the average amount in the plant at any one time. The figure will fluctuate up and down with holidays and with the seasons. The longer the time for processing, the higher will be the average value in the plant at one time.

The basic factor in the rate is the fire insurance premium for the average value in the plant. To this is added a loading for burglary, theft, holdup, transportation, and any other hazards covered by the policy. The ultimate measure of proper rating is whether each laundry or dry cleaning plant is producing enough premium to take care of all its regular losses plus enough to help pay for the occasional large fire loss among such plants. The

[6] See Automobile Ins. Co. v. Barnes-Manley Wet Wash Laundry Co., 168 F. (2d) 381 (1948); cert. den., 93 L. ed. 41 (1948), for a case in which the insurance company charged fraud in the reporting of gross receipts and the assured was forced to pay a substantial portion of the loss.

premium produced by the loading must take care of the recurring losses, and the fire portion of the premium must go toward the fire losses of all insured plants of this class.

The principal underwriting problem in connection with laundry and dry cleaning plants is the threat of large loss by fire. Inspection by a fire protection engineer is desirable, and the amount of liability accepted should be set at a figure no higher than would be accepted for a comparable fire policy. Automatic sprinklers, fire alarms, watchman service, and fire resistive buildings are all desirable features.

The fire insurance rate is intended to measure the fire hazard, but there are many features in the management of a property that cannot be measured on schedules. Dry cleaning plants using flammable solvents are particularly susceptible to fire losses. The most desirable plants are those using nonflammable solvents, of which there are several good ones on the market. A large proportion of dry cleaning plants use a so-called "safety solvent," which is a highly refined form of kerosene. It does not give off flammable vapors at temperatures below 100° Fahrenheit, but it will burn and does give off flammable vapors at higher temperatures.

Many policyholders have a tendency to carry too little insurance. In an effort to cut down on their costs, some assureds ask for low limits in the belief that they never will have a total loss. There have been several severe fire losses in which the amount of bailees' customers insurance was inadequate. In such cases the customers' losses are not fully covered.

The theft hazard is examined in regard to the probability of recurrent losses from delivery trucks. In the larger cities an unattended truck is likely to have the contents stolen unless it is securely locked whenever the driver is not present. Many companies recommend that their assureds equip their trucks with snap locks that lock automatically when the doors are closed. The drivers are provided with long key chains that make it easy for them to open the doors. It has been found that drivers will not use the locks on the trucks unless it is convenient for them to do so.

A comprehensive application form is desirable for the agent's use in submitting a bailees' customers proposal to the company. Inspection of the plant includes a check of the assured's gross receipts to make certain they are being reported correctly. Policies usually give the insurance company the right to audit the assured's

books. Many assureds do not understand that all their receipts must be reported. It is much better to have an inspector or auditor point out the correct method in advance of a loss, rather than to have the deficiency interfere with a loss settlement.

Rug and carpet cleaning form. A variation of the bailees' customers policy is written for rug and carpet cleaning plants. It is similar in most respects to the laundry and dry cleaning form except that it contains a special clause limiting the liability of the company according to the type of rugs or carpets. These special limits are on a unit basis rather than as a limit per location or per vehicle, although there may be limits per location or per vehicle in addition. A typical endorsement for a rug and carpet cleaning policy reads as follows:

It is hereby understood and agreed that the following limits of liability shall apply to goods insured under this policy:

(a) On domestic rugs and roll carpets, not exceeding $2 per square foot;

(b) On oriental and foreign rugs, including semiantique rugs, not exceeding $10 per square foot;

(c) On draperies, not exceeding $50 per set;

(d) On cushions, not exceeding $50 per cushion;

(e) On other articles, including furniture, not exceeding $100 per article.

Pressing or tailor shop form. Many tailor shops do repairing and pressing and act as receiving stations for laundries and dry cleaning plants. The values and the nature of their operations do not justify the elaborate policy provisions and the monthly payment methods used in connection with the regular bailees' customers policy. Some companies write a simplified bailees' customers policy for such properties. The premium is on an annual basis and averages about one per cent of the gross receipts. However, the premium usually is figured on the limit of liability, so that a tailor shop with $5,000 of gross receipts might have a limit of liability of $1,000. The premium of $50 a year (for example) would be one per cent of the gross receipts but five per cent of the limit of liability. The rate would vary according to the fire rate on the premises and might be considerably in excess of the figure used in the example.

It is not customary for insurance companies to permit assureds under tailor shop policies to adjust losses. Policies usually contain a provision that any loss payment will reduce the amount of insurance. This makes it necessary for any loss to be reinstated if the assured is to continue having full insurance.

In all other respects, the tailor shop form is similar to the bailees' customers form in its coverage and conditions. Many companies write a tailor shop policy for shops having less than $10,000 of gross receipts per year and a monthly reporting bailees' customers policy if the gross receipts exceed that amount. This depends largely upon how small a monthly premium the insurance company is willing to handle. Some companies are willing to insure on a monthly basis any plant developing $10 a month or more premium, whereas others feel that the minimum amount that can justify the extra bookkeeping of a monthly account is $50 per month.

Linen supply floater. Laundries may be interested in the purchase of a floater policy to cover towels, coats, and other supplies that may be rented out to customers. This is not a bailee form but a floater policy covering the owner of the goods. It may be written as a transportation floater. Usually the coverage is similar to that given in the bailees' customers policy, and the form is mentioned here for that reason. According to the "Nation-Wide Definition," the coverage on the assured's premises must be limited to property that is there only incidentally to its regular and frequent use outside the premises. The principal hazards to linen supplies are those of transportation and those on the assured's premises. These are similar to the hazards under a bailees' customers policy. The hazards at the premises of linen supply customers are important only when a large supply is delivered to a single building. Usually the property is so spread out when it is in the hands of customers that only a small amount would be affected by a single loss.

Questions

1. What is a bailment?
2. What is the responsibility of a bailee for property that is in his custody?
3. Distinguish between the degree of care required of a common carrier and that required of a bailee.
4. How may a bailee extend his liability for goods in his custody?
5. Under what circumstances may a bailor insure his property?
6. Under what circumstances may a bailee purchase an inland marine policy to protect himself against loss as a result of his legal liability for damage to bailed property in his custody?
7. What type of property ordinarily is covered under a bailees' customers policy?

8. Explain the advantages to the assured and the disadvantages to the insurance company of a bailees' customers insurance policy that has no limit of liability.

9. What is the usual basis for premium payment under a bailees' customers policy?

10. Discuss the usual methods of arriving at a rate for a bailees' customers policy on a laundry or dry cleaning plant.

11. What factors does an inland marine underwriter consider in judging the desirability of insuring a laundry or dry cleaning plant?

12. What are the usual differences between a bailees' customers policy and a tailor shop policy?

CHAPTER XIV

Furriers' Customers Insurance

The furriers' customers policy provides a special form of bailees' customers coverage. The customs of the fur business and the coverage of the hazards are different from those of laundries and dry cleaning plants and require special treatment.

Years ago the ownership of a fur coat was an indication of wealth, and only members of wealthy families were able to sport such garments. This no longer is true, and the warmth and beauty of furs are enjoyed by women in all walks of life. Furs are extremely susceptible to moth damage, and it is difficult for the householder to protect them at home. Coincidentally with the increase in the sale of furs, there has grown up a large business in the storage of them during the months when they are not in use. Many storage warehouses are refrigerated to a temperature too low for moths to remain active, and other warehouses are fumigated so that all moth life is killed.

The Furrier's Liability as a Bailee

The furrier and the warehouse that store furs are bailees, and they are responsible for the safekeeping of the property in their possession to the same extent as any other bailee. As in the case of laundry and dry cleaning plant customers, the owners of fur garments have come to expect the furrier and warehouseman to make good any loss, regardless of liability. There is the same need for a bailees' customers insurance policy as in other cases of the bailee's servicing the personal property of his customers.

There are two important ways in which the insurance of the furrier's liability differs from the insurance of laundries and dry cleaning plants.

The first is in the breadth of the coverage. Owners of fur garments have come to expect a broad coverage. The furrier is forced by the competition of the coverage furnished under individ-

ual fur coat insurance policies to seek an equally broad coverage for his customers.

The second difference is brought about by the custom in the fur storage business of issuing for each garment a receipt in which the value of the garment is stated. As explained in the preceding chapter, the courts generally have given effect to agreements limiting the amount a bailor may recover from a bailee. Although it is considered to be against public policy to permit bailees to avoid the consequences of their own negligence, the courts have held that the parties to a bailment may relieve or limit by contract the amount of the bailee's liability. Such limitations on the amount of liability have been upheld most frequently when the bailor has been given a choice of protection to the full value at one price or protection to a lesser amount at a lower price.[1]

Whenever a furrier accepts a fur garment for storage, he ascertains the valuation the owner wishes to place upon the garment and issues a receipt for that amount. The most effective of the receipts are those stating that the garment is worth the amount specified and no more. Even if the furrier is liable for loss because of negligence, his liability is likely to be limited to the amount stated. However, the furrier may be held liable for the full value of the garment (even if it exceeds the amount stated in the receipt) if it can be proved that the bailee has violated the property rights of the owner by some act that is tantamount to conversion.[2]

Furriers' Customers Insurance

For many years the terms of the "Nation-Wide Definition" were interpreted in such a narrow sense that only fur garments and garments trimmed with furs were considered eligible for furriers' customers insurance. The Definition says that it is proper to issue as a marine or inland marine form:

> Furriers and/or fur storer's customer's policies (i. e., policies under which certificates and/or receipts are issued by furriers and/or fur storers) covering specified garments the property of customers, but only while in the custody of the furrier and/or fur storer.

During more recent years the interpretation has been liberalized to permit the insuring of any garment stored by a furrier or fur storer. (The "Nation-Wide Definition" as quoted above does not

[1] See Schoen v. Wallace, 334 Ill. App. 294 (1948).

[2] See Chapter XIII for a discussion of acts by a bailee that may be held equivalent to conversion.

limit the policy to fur garments, but to garments stored by furriers or fur storers.) Under present rules of the inland marine rating bureaus, the word "garments" has been further extended to include not only clothing but also textiles and similar articles. The effect is that anything made of textile material may be considered a garment and may be stored and insured under a furriers' customers policy, provided the storage is in a place where furs could be stored. Fur storers are now considered to be any furrier, bank, store, laundry, cleaner, general or fur warehouseman, cold storage concern, or other bailee who would accept a fur garment for storage.

The furriers' customers policy coverage. The standard form of furriers' customers policy states:

> This policy covers only the following described property owned by or under contract of sale to customers of the named Assured or other bailee(s), and for which the named Assured issues a receipt which includes an agreement that the named Assured shall effect insurance and contains the provisions required by condition 1 of this Rider:
>
> (a) Furs and garments trimmed with fur accepted by the named Assured for storage, alterations, repairing, cleaning or remodeling;
> (b) Other garments, textile and similar articles customarily accepted for storage by garment storers, provided such property is accepted by the named Assured for storage.

The provision regarding the issuing of a receipt is important. There is no coverage under the policy on property taken in by the assured for any purpose (including storage) unless he issues a receipt for it in the proper form. If this provision is not called to the attention of the assured, he may be careless about issuing receipts for garments that are brought in for a small amount of work. The furrier may find himself liable for large uninsured losses if he fails to issue receipts for garments left in his possession.

Condition 1 of the rider mentioned in this extract specifies certain conditions that must appear in the receipt issued by the assured. Other provisions not in conflict with these may be added, but these are necessary in all receipts:

> (a) The customer accepts the receipt as correct in all respects unless the customer notifies the named Assured in writing within ten days after the date of issue thereof of any error or irregularity therein;
>
> (b) the named Assured will have effected for the benefit of the customer insurance on each article listed in the receipt which shall, in terms usual to such insurance, cover against loss by fire and theft for the value set opposite each item, which value shall also be stated to be the limit of the named Assured's liability for any loss of or damage to said article;

(c) the provisions of the receipt shall inure to the benefit of the Company to the same extent that they inure to the benefit of the named Assured.

(d) the provisions of the receipt shall not extend in kind or amount the insurance provided by the policy;

(e) it supersedes any temporary or interim receipt given by the named Assured.

The assured agrees in the receipt given to the customer to provide only fire and theft insurance, although the policy actually grants much broader coverage than that. It also is clear from an examination of the description of the property covered that only the property of customers is insured, and there is no coverage on the property of the assured. The stock of merchandise of the assured is not considered eligible for inland marine coverage, and the furriers' customers policy cannot be extended to cover it.

The territorial limits are the continental limits of the United States and Canada, and the property is covered within those limits just as long as it is in the custody of the assured. This means that if the property has to be shipped to another location for storage, repair, cleaning, or delivery to the customer, it still is covered by the policy as long as the assured is responsible for it and it is within the territory specified.

The coverage is against "all risks" of loss or damage with a few exclusions. The assured's legal liability is specifically included.

Exclusions. Property belonging to the named assured and its subsidiaries or affiliates is excluded in order to clarify the intent of the policy as strictly a customers' goods coverage. There is a war risk exclusion similar to those in transportation policies. Only three other exclusions appear, and these are particularly designed for this policy.

The first excludes loss or damage "occasioned by gradual deterioration, moth, vermin or inherent vice, or by processing or by any work upon the property unless caused by fire or explosion."

The second excludes "liability assumed by the named Assured under any agreement, express or implied, (1) to guarantee the results of processing or any work to be performed upon the property, or (2) to effect insurance upon such property in any amount except as provided herein." As noted above, the policy covers the legal liability of the assured, and this includes contractual as well as common law or statute liability. However, underwriters do not consider it feasible to insure the liability that the assured might assume for the completion of some work or process. The other

restriction in this clause is necessary because the premium for the policy is based upon the amounts declared in the receipts, and any agreement by the assured to effect insurance outside or above that amount would result in the insurance company's being liable for losses for which no premium is received.

The third exclusion refers to "any amount of loss or damage on account of which the named assured, in the absence of this insurance, would be entitled to indemnity under any applicable fidelity bond or similar undertaking." The policy does not exclude loss due to infidelity of the assured's employees, and in the absence of a fidelity bond the assured would be able to collect any such loss under the furriers' customers policy. If the assured carries a fidelity bond, however, this clause is intended to make it the primary insurance for an infidelity loss.

Limits of liability. Limits of liability are set out carefully and clearly. The clause covering this point calls attention to the fact that premiums are to be paid on the basis of the aggregate amount of values set forth in all the receipts, but the clause also states that the limits of liability shall apply even if the aggregate of the values stored should exceed the limits of liability.

Specific dollar limitations of liability are set forth applying to (1) the aggregate amount for which the company shall be liable in any one casualty, (2) storage enclosures at specified premises, (3) locations outside storage enclosures at the storage premises, (4) other premises not used for storage purposes, (5) any other unnamed premises, and (6) property in transit.

The general clause on limitation of liability states that the company shall not be liable for more than the amount stipulated in the storage receipt, or the actual value, or the cost of repair with materials of like kind and quality, whichever is less. These limitations all are considered necessary because the values of fur garments are high. The total values can pyramid so rapidly that the company must be notified when the amount at risk goes beyond the point for which reinsurance has been arranged. No insurance company could afford to issue an unlimited policy covering furs as some companies do in connection with laundry bailee policies.

Special conditions. The special conditions of the policy are designed for the peculiar situations affecting the fur insurance business. The assured is obligated to use due diligence in maintaining the protective devices described in the proposal for the

insurance. This is important because many fur storage premises are protected by burglar alarms, sprinkler systems, or watchman service. Rates and underwriting are based upon the presence of these devices, and the insurance company must be notified if any of them are discontinued.

In case of loss, the insurance company has the option of adjusting losses with the assured or with the customer. The company also has the right to take any steps it deems necessary to protect, rehabilitate, or recondition the property, including the removal of the property from the place of loss and the employment of independent contractors to do the work. This is an important right in case the assured should not be coöperative in the reduction of the loss. Fur losses need immediate attention to prevent further damage. Extensive additional damage might occur while any controversy was being settled.

Cancellation may be made by the company in fifteen days instead of in the five days provided for by many inland marine policies. This is a concession to the assured, because it might take more than five days to arrange for insurance on such large values as may exist in a fur storage warehouse.

The assured is required to keep an accurate record of all the receipts he issues, together with the customer's name and address, description of the property, amount of value stipulated, and the location of the garment in storage. The company has the privilege of examining these records at any reasonable time during the policy period and for one year thereafter. The assured is required to report to the company by the fifteenth of each month the aggregate amount of values set forth in all outstanding receipts as of the last day of the preceding month and to pay premium on these aggregate values. If there is more than one storage location, the report must show the values at each location.

Certificates issued by the furrier. The policy also provides that the assured shall not issue certificates of insurance to customers on the insured property except in the company issuing the policy, and then only when permitted by endorsement to the policy.

The "Nation-Wide Definition" specifies that the furriers' customers policy shall cover the property only while it is in the custody of the furrier or fur storer. Many states have modified the Definition to permit the issuing under fur storage policies of certificates that cover outside the storage premises and while the

garments are not in the custody of the assured. They are, in effect, insurance policies that cover for the benefit of the individual owner whenever the garment is out of storage. Thus the owner of a fur garment can go to the furrier and store his garment for the summer (during which time the garment is insured under the furriers' customers policy) and at the same time get a certificate insuring the garment for one year from the date it is put in storage regardless of how long it stays there. This saves the owner the trouble of buying an individual fur coat policy.

The cost of such a certificate of insurance is fifty cents per $100 of value declared. The certificate cannot be issued for any greater amount than the owner declares to the furrier for storage purposes. The owner cannot put a value of $100 on the fur coat for storage purposes and get a certificate of insurance for $500.

The exact form of the certificate differs according to the requirements of the state insurance departments. Some states require that the certificate show the exact amount of the storage and premium charges. In other states, it merely is necessary for the furrier to show the total amount of the charges, and under this arrangement the customer cannot see what he is charged for the insurance.

This rate is less than that charged for a personal fur policy. The difference is considered justified by the fact that the furrier already has paid a premium for the protection on the property while it is in storage. There is perhaps some additional saving to the insurance company in that a certificate is less expensive to issue than a full policy.

Most states require that the certificates be countersigned by an agent of the insurance company in accordance with the state countersignature laws. The countersignature requirements usually are taken care of by the agent who writes the furriers' customers policy. Copies of the certificates must be forwarded to the company. The insurance company has the privilege of cancelling any certificate on five days' notice, but the cancellation of the underlying furriers' customers policy does not cancel the certificates that have been issued. It is necessary for the company to cancel each certificate individually if it desires cancellation.

Excess legal liability. It has been explained that the furriers' customers policy covers the legal liability of the assured and the interest of the owner only up to the amount stipulated in the

storage receipt given by the furrier to the owner. It also has been explained that the furrier may be liable for the full value of the garment (in spite of the limitation in the receipt) if the owner can prove that the furrier has performed some act that is tantamount to conversion. Even if the owner has other insurance to indemnify him for the loss, the other insurance company is likely to sue for its loss if it appears that the furrier can be proved liable. This potential liability of the furrier above the values stated in the receipts is called "excess legal liability," and it can be insured by an endorsement to the furriers' customers policy.

There are two forms of this endorsement covering excess legal liability. The first is issued to cover the liability in connection with garments for which the assured has issued receipts to garment owners. The other endorsement is used to cover the bailee who stores garments for other bailees. For example, many cold storage warehouses, in addition to storing garments for individual fur owners, also rent out space to furriers and other storers who do not have storage facilities of their own. These bailees might be held liable for loss to the bailee, or to the owner of the garment, or to the owner's insurance company. Both endorsements might be attached to a policy that covers a storage warehouse doing both a retail and a wholesale fur storage business.

Other provisions of the two excess legal liability endorsements are the same. Both cover any loss that the assured is obligated to pay because of direct loss or damage in excess of the amount stated in the receipt to property covered by the policy (and for which the assured has issued a receipt). The exclusions are few and refer to liability assumed by the assured, war damage, and liability for loss due to gradual deterioration, moth, vermin, inherent vice, or by processing or by any work upon the property unless caused by fire or explosion. These exclusions are similar to those in the policy to which the endorsement is attached.

The assured is obligated to notify the company as soon as practicable when it appears that an excess legal liability claim may be presented, and he must coöperate with the company in settling or defending the claim. The company has the right to defend or compromise the claim at its sole option.

Two limits of liability appear on the excess legal liability endorsement. The first is a limit per article, and the second limits

the amount the company shall be obliged to pay as a result of any one accident, casualty, or event.

An extra premium is charged for the excess legal liability endorsement. This premium is a percentage of the policy premium. The percentage varies with the relation between the limit in the excess legal liability endorsement and the aggregate of declared values in the storage premises of the assured.

It is important for the assured to carry excess legal liability coverage. Many customers declare their garments for less than the actual value, either to save on storage charges or because they have other insurance. In case the assured is liable for loss above the declared values, he would have to pay the excess amount himself unless the legal liability endorsement were attached to the policy.

Rating procedure and proposal form. The rates for furriers' customers storage policies are computed by the rating bureaus for their members and subscribers. Independent companies use a method and schedule similar to those used by the rating bureaus. The information for the computation of the rate is furnished to the bureau by the insurance company on a lengthy proposal. In addition to the information requested in other inland marine proposal forms regarding the assured and the nature of his business, the furriers' customers proposal inquires regarding the peak values stored during the preceding twelve months, the details of any losses during the past five years, a list of the storage locations, the limits desired on the policy, and much detail regarding the construction and protection of the storage vaults. The insurance company must supply the fire insurance rates for general contents and for vault contents (if published) at the storage locations.

The basic rate is the eighty per cent coinsurance fire rate for vault contents as published by the fire insurance rating bureau. If there is no rate published specifically for the contents of the vault, the schedule provides a method of computing a vault contents rate from the general contents fire rate. The vault contents rate can be as low as fifty per cent of the fire contents rate for a small vault and graduates upward for larger-sized vaults. The annual fire rate for the vault contents (calculated according to the schedule or taken from the fire rating bureau) is divided by twelve to secure a monthly rate.

The loading for the other hazards covered by the policy graduates downward from six cents per $100 per month, depending upon the

construction of the vault, the type of fire doors at the vault openings, and the burglar and fire protection provided. This loading can be as low as one-half cent per month for a well-constructed vault with good fire and burglar protection.

An additional charge of one cent per month is made when the assured's receiving location is different from the storage location. This is a flat charge and does not vary with the protection of the storage premises. There is a substantial hazard in the transfer of several fur coats from the assured's sales location to the storage location.

Underwriting Fur Storage Risks

The underwriting of fur storage operations is a difficult problem. An underwriter appraises the likelihood of theft of individual garments at the store or receiving station and investigates the possibility of a catastrophe loss from fire or burglary at the storage location. The total values at storage locations may run into many millions of dollars. In a community where a company has many personal fur policies in effect, a bad fire might result in the company's being liable not only for damage to garments insured under the furriers' customers policy but also for the value of garments insured under individual fur policies.

The premium received for a fur storage policy is not sufficient to carry a load of frequent losses of individual garments. A loss of one or two garments a year could offset the entire premium for a medium-sized fur storage policy. An underwriter attempts to pick out the factors in a fur storage operation that could result in occasional loss of garments. Prevention of losses helps to keep the rates reasonable.

An important possibility of loss to be considered occurs during pickup and delivery to the customer. Many garments are called for by the furrier at the customer's request, and many furriers advertise a pickup and delivery service as part of the inducement to store furs with them. The delivery truck may be held up while out on its route, or a sneak thief may pick up a coat and walk off with it when the driver is not watching. All trucks used for pickup and delivery of insured furs should be provided with good locks of the snap type that will lock automatically when the door of the truck is closed. It is not safe to rely on the memory of the driver to lock his vehicle when he leaves it. Automatic alarms are recom-

mended for trucks used by furriers and have proved effective in preventing thefts.

Sneak thieves sometimes are responsible for losses from within the furrier's shop. The store and shop should be arranged so that no one except employees has access to the spot where customers' garments are received and stored. Counters should be continuous, so that an outsider cannot walk around them into the shop portion of the premises. Stocks of merchandise for sale should be kept separate from the customers' goods to avoid the chance of a customer's garment getting out onto the sales floor where it can be sold by mistake or picked up by someone in the store. Rear entrances should be kept locked except when actually in use, and some means should be provided for the person inside the store to see who is at a rear entrance before the door is opened. Only persons who are recognized as having business in the store should be permitted to enter a service door.

Many furriers do not maintain their own vaults for storage but store their customers' goods in a large warehouse in rented space. The garments again are exposed to theft or other loss during the transfer from the furrier's place of business to the warehouse. Loading and unloading should be done under the supervision of a reliable employee. The driver must not be permitted to unload alone, for this procedure requires him to leave the truck unattended when he goes into the building with an armload of garments.

All employees who have access to the furs should be bonded. This arrangement has two advantages. First, any loss that can be proved to be the result of theft by a bonded employee is not covered under the furriers' customers policy, since the bonding company would be responsible for that as an infidelity loss. Secondly, the investigation bonded employees undergo is likely to show up any employee who has been involved in previous thefts. Honesty of all employees is an extremely important factor in a favorable experience on a fur storage line.

Sometimes garments are lost without any indication of how the loss occurred. The identification may have been lost from the garment so that it cannot be matched to the claim ticket. Identification tags must be attached securely, and the records should show a good enough description of the garment that there can be no question of identity if the tag does come off. The furrier should

also keep a record of where the garment has been placed in the vault as a further means of locating it.

A careful insurance company inspector follows each step a garment takes as it goes through the furriers' hands to and from storage and to the customer. The procedure should be changed at any point where it could result in loss or theft of a garment. It is only by a strict control of the individual loss possibilities that the company can hope to retain enough premium to pay for the catastrophe losses inherent in this class of insurance.

Fur Vault Construction and Protection

If the underwriter finds that the garments are protected satisfactorily on their journeys to and from the customer's premises and the storage location, he then must determine whether the chances of a catastrophe loss are serious at the storage location. The furrier who has a small vault and a few thousand dollars' worth of furs in storage does not offer the temptation to a gang of thieves that is offered by an accumulation of furs worth a million dollars. The greater the temptation to thieves, the more formidable must be the protection against them.

The vaults used for storage by some small fur stores are nothing more than cabinets in which the furs are fumigated to keep moths from eating the garments. Such cabinets offer little resistance to a clever burglar, but this does not mean that they need to be an open invitation to burglars. The most effective protection is a good burglar alarm system by which a report is made to a central station and thence to the police. Any attempt at burglary would bring the police and the burglar alarm company guards before the thieves would have time to make off with any loot. This central station burglar alarm service is similar to that described for jewelry stores.

There are many medium-sized fur stores in which the vaults are large enough to accommodate from $100,000 to $500,000 worth of furs. This concentration of value justifies strong protection, not only from burglary but also from the danger of fire. The desirable features of construction and protection are described in the following paragraphs. The greater the value, the more nearly perfect should be the combination of protective features.

The vault should be constructed like an independent building within a building, so that if the entire surrounding building is

destroyed by fire, the vault will remain intact. Walls of brick, tile, or concrete block in thicknesses of twelve inches or more offer a good degree of fire resistance. It is not difficult, however, for a burglar to breach such a wall if he can work on it for an hour or more inside a building. Reinforced concrete is a more nearly satisfactory protection, because the steel rods running through it make the work of burglars more difficult. Some vaults contain a lining of burglar-resistant steel plate, and this is desirable, especially for brick, tile, or cement block walls. Floors and ceilings should be equivalent in construction to the walls.

All doors, windows, and vents should be protected with fire doors that are capable of withstanding a severe fire for several hours. Openings large enough for a person to enter should be protected by burglar-resistant doors as well. The best-protected vaults have two doors at each opening, one labelled by the Underwriters Laboratories for fire resistance and the other for burglar resistance. The double protection makes it unlikely that either burglars or fire can get through the opening.

It is generally recognized that there is no door or wall made that a clever burglar cannot get through if he has sufficient time and the proper tools. In addition to strong construction, there should be an alarm system to give warning when an attempt at burglary is made. The best burglar alarm systems are those that report to a central station maintained by a burglar alarm company and manned twenty-four hours a day. The electrical connections are monitored constantly, so that the wires cannot be cut or otherwise put out of commission without the central station's being notified.

The simplest of the burglar alarm devices consist of electrical contacts on the doors and windows that send in an alarm when the door or window is opened. Because burglars may go through the walls instead of the doors and windows, the walls may be wired in such a way that it is impossible to cut a hole large enough for a person to get through without sending an alarm. Another device for vault protection is a sound device that sends an alarm if there is an unusually loud noise. The breaching of a masonry wall is a noisy job, and a burglar could not get into a vault with a sound alarm without setting it off.

Still another protective device uses electric eyes and beams of invisible infrared light. These can be put in a vault or about the

premises so that it would be impossible to walk about the place without calling the police and the central station guards.

A watchman is desirable for patrol purposes when the premises are closed for business. The simplest device to check on his movements is the watchman's clock, on which he records his rounds. The standard requirement is that the watchman make a complete round of the building at least once an hour. The clock should be checked each morning to see that he actually has made the rounds and did not sleep part of the night. Insurance inspectors check the watchman's records to see that the service is not being neglected.

Unfortunately, the watchman's clock cannot give any indication during the night if the watchman goes to sleep, has an accident, or is held up by burglars. This service is provided in a supervised watchman's service of the burglar alarm companies. The watchman is required to turn a key in devices set about the building. If he misses a round or is late, the central station sends a guard to investigate. The devices are so arranged that the watchman can signal for help if he is held up or becomes incapacitated. Even if the burglars are aware of the watchman's signalling system and force him to continue his rounds, there are devices by which the watchman can signal for help without the knowledge of the burglar who has a gun at his back.

Large concentrations of value require that fire protection be installed in the vault. Automatic sprinklers are considered an excellent all-round fire protection, both for the vault and for the premises outside it. If there is a sprinkler system, there is not likely to be nearly so severe an exposure fire to the vault as there is without such protection. It is desirable to have the sprinkler system connected to a central station burglar and fire alarm company, so that any fire at night will be detected as soon as the sprinkler system operates. Otherwise the sprinkler system might operate for several hours until the premises were opened in the morning, and enormous water damage would result.

Vaults may be equipped with apparatus that floods a vault with carbon dioxide in order to smother fire. Carbon dioxide does no harm to the garments, and many fur storage operators prefer such a system to automatic sprinklers.

In a cold storage vault, sprinklers may be slow to operate because (1) fur fires are likely to smolder for a long time before giving off enough heat to operate the sprinklers and (2) the refrigerating

system tends to carry off the heat and slow down the operation of the sprinklers. A variation of the electric eye device used for burglary protection can be used to detect smoke that passes through the beam of light. Such a smoke detection system might give an alarm of fire much in advance of any other means of discovery.

A $3,000,000 fur vault fire at New Haven, Connecticut, in 1943 illustrates the way a combination of circumstances can result in an enormous loss to the contents of such a vault. The vault area was entirely without windows, and the time lock arrangement on the vault doors prevented the firemen from getting into the vault in the early stages of the fire. There were no automatic sprinklers, nor was there any carbon dioxide flooding system by which the fire could be controlled from the inside. The fact that the furs were packed in tightly resulted in a smoldering, extremely smoky fire.

Eventually it was necessary for the firemen to break through the walls with pneumatic drills and to flood the entire three floors of the vault. It was reported that the fire had been started by an electric light bulb that had been left turned on and in contact with a fur coat or some other combustible material. A ventilating duct that ran through three floors without cut offs permitted the smoke to fill the entire building and prevented firemen from working inside the structure. The installation of automatic fire detection and control equipment in the building, as described in the preceding paragraphs, probably would have confined the fire to the area of its origin and might have kept the loss to a nominal figure.

Questions

1. How does furriers' customers insurance differ from the coverage under a bailees' customers policy for a laundry or dry cleaning plant?
2. What type of property may be insured under a furriers' customers policy?
3. Why does the furriers' customers policy cover only garments for which the assured gives a storage receipt?
4. What are the principal exclusions in the furriers' customers policy?
5. Why do inland marine underwriters consider it necessary to specify in detail the limits of liability under a furriers' customers policy?
6. Why does an insurance company consider it necessary to have the right to proceed with salvage operations in case of a loss under a furriers' customers policy?
7. What coverage is provided by a certificate issued by a furrier under a furriers' customers policy?

8. Discuss the furrier's need for excess legal liability insurance.

9. Outline the procedure used in calculating the rate for a furriers' customers policy.

10. Discuss procedures for preventing loss of fur garments as a result of theft.

11. Discuss the construction and protection recommended for fur storage vaults in order to prevent fire and burglary losses.

CHAPTER XV

Miscellaneous Bailee Coverages

THE TWO PRECEDING CHAPTERS have discussed forms of bailees' customers insurance that have been written for many years and are firmly established as inland marine coverages. Other bailees' customers coverages have been developed more recently and are intended to fit the needs of specific industries. The hazards vary according to the operations covered. Underwriters find it desirable to become familiar with each industry because the coverages are not standardized and must be adapted to the needs of each policyholder.

Cold Storage Locker Bailee Floater

Meat shortages during World War II caused the cold storage locker business to boom. During the few years prior to the war it had been found that foodstuffs can be frozen at sub-zero temperatures to preserve most of their flavor and appearance. When it became difficult to buy meat in the regular markets, many people looked about for places where they could buy a hog or half of a steer. It was necessary for them to store the meat, and the neighborhood locker plant offered the solution.

The storage of frozen foods proved to have a utility that outlived wartime shortages. Improved methods of processing resulted in a frozen product superior in many ways to the canned and dried foods that had been used for generations. Farmers and town people who have gardens have found it desirable to freeze their surplus vegetables and fruit.

The use of home freezer units in the postwar years appeared to be a serious threat to the cold storage locker business. These freezers came onto the market in large numbers. However, most of them are of a size that permits keeping only current supplies of food in the home. The people who freeze their surplus stocks of vegetables and fruit and who have meat slaughtered for a winter's

supply still find it advantageous to rent locker space for their bulk storage. They go to the locker plant once or twice a week and store their current supply in the home freezer. It appears that the cold storage locker plants serve a continuing need, particularly in those communities where people raise their own supplies of food for winter or where such food is easily available for purchase during the summer.

Most of the goods stored in a locker plant are brought to the plant by the patrons, although some plants maintain a pickup and delivery service. The locker owner is maintaining what is primarily a storage operation, and he is in the position of a bailee. The relative amount of transportation while in the custody of the locker operator is less than in the case of a launderer or furrier.

Perhaps it was this relatively small amount of transit hazard at the risk of the locker owner that prompted the Joint Committee to rule in Interpretative Bulletin No. 85 that cold storage locker plants are not eligible for inland marine coverage. Since that ruling of the Joint Committee, however, almost all the states have amended the "Nation-Wide Definition" to permit the writing of a bailees' customers inland marine policy on the contents of a cold storage locker plant.

The liability of the cold storage locker plant operator is similar to that of any other bailee. He is dealing with the public, and not only is he interested in protecting himself from liability for loss, but he wants also to reimburse his patrons for any loss regardless of his liability. The insurance coverage available for this purpose is fundamentally the same as that used for launderers or furriers, although the coverage is adapted to the peculiar needs of food storage.

Coverage under cold storage locker policy. There are several variations of the coverage in use. Specified perils policies issued by many companies protect against loss by fire, lightning, windstorm, hail, explosion (except boiler and machinery explosion), riot and civil commotion, falling aircraft, motor vehicle, earthquake, theft and burglary, and collision or overturning of vehicles on which the property is being transported at the risk of the assured. The definitions and limitations of these coverages are much the same as in other bailee policies.

Also included is a coverage similar to that in the laundry bailee

policy which protects against loss due to confusion of property from any of the perils specifically covered.

A coverage peculiar to the cold storage locker bailee form is that insuring against consequential loss or damage caused by changes in temperature resulting from:

(a) Total or partial destruction of refrigeration or cooling equipment, connections or supply pipes by the perils enumerated above;

(b) Electrical interruption caused by breakdown of the electric generating or transmission system preventing the assured from maintaining operation of the cooling system;

(c) Mechanical breakdown of the refrigeration or cooling equipment, connections or supply pipes.

Some policies are written to cover consequential loss from any interruption of electrical power. This covers such interruptions as might result from a shutdown of electric generating plants from lack of fuel during a coal strike. After the coal strikes of 1946 and 1947, when it appeared possible that electric power would be curtailed on a large scale, many insurance companies changed to the wording just quoted, which covers only when the interruption results from a breakdown of the electric generating or transmission system. The rates charged for the coverage are not considered sufficient to protect against a nationwide catastrophe such as might result from a general curtailment of electric power.

An "all risks" form is written, and there was a prescribed "all risks" form in the state of Wisconsin for a few years prior to the enactment of the present rate regulatory law. It was developed by the Wisconsin Fire Insurance Rating Bureau at a time when the bureau had a limited jurisdiction over inland marine forms.

The principal difference between the "all risks" and the specified perils form is in the coverage clause, the exclusions and special conditions being much the same. The "all risks" form is broader in its coverage and protects against some miscellaneous hazards not listed in the specified perils form. The "all risks" form covers losses resulting from general curtailment of electrical power.

The exclusions are almost uniform among the many variations of this policy. The usual inland marine exclusions of loss due to gradual deterioration, spoilage, vermin, or inherent vice are expanded to exclude loss due to any processing. This is an attempt

to avoid loss by smoking processes. Many locker plants do smoking of meat, and the insurance does not cover loss due to a fault in the process. Most of the policies are so worded that damage resulting from a fire that breaks out as a result of the smoking operation would be covered.

Like the laundry bailee policy, the cold storage locker bailee policy excludes loss resulting from misdelivery or careless destruction of goods, losses due to the infidelity of the assured's employees or any person to whom the goods are entrusted, war damage, and loss resulting from neglect of the assured to save and preserve the property at the time of a loss.

A special exclusion relates to leakage of refrigerant gases. Many policies exclude such damage unless it results from a bursting of the containing system. There is some doubt as to what constitutes a bursting of the system. Obviously a sudden rupture with a noise and immediate release of the refrigerant would be so considered. It is not so clear where the line can be drawn between a gradual leak and a rapid leak that can be considered a bursting of the system. There have been some total losses from leakage of refrigerant gases and consequent contamination of all the food stored in the plant. The locker owner needs protection against such a loss whether it is due to a sudden rupture or a slow leak. Insurance companies can provide the coverage if the assured is willing to pay a rate that is adequate for the protection.

The property covered and the conditions of coverage usually include meat, fowl, game, fish, vegetables, fruits and other edible goods held by the assured as bailee for the purposes of chilling, cutting, freezing, and storing, all while situated in the locker plant described in the policy and while being transported to or from the plant by the assured. Some policies also extend the coverage for five days to any other place where the property must be removed for preservation from a peril insured against. The property is covered anywhere in the locker plant and not merely within each locker rented by a patron. This provision intentionally extends coverage during the cutting and packaging that locker operators do for their patrons.

The amendments to the "Nation-Wide Definition" adopted by most of the states are so worded that they apply only to property accepted by the assured for storage in lockers. The coverage is not

intended to be granted to property processed by the assured but not stored on his premises.

There are two limits of liability in almost all policies. One is a limit per locker and the other is a limit per catastrophe. The limit per locker commonly is $50, but this may be changed when the lockers are odd sizes or when the nature of the goods is such as to justify a different figure.

The limit per catastrophe usually is the limit per locker multiplied by the number of lockers in the plant. Some policies also contain a further limitation that coverage on property outside lockers while on the premises and in the course of transportation shall be limited to ten per cent of the catastrophe limit. This is intended to prevent the company's being held liable for a large amount of bulk storage for which no premium is being received.

Like other bailees' customers policies, this one contains a provision that the insurance company has the option of adjusting losses with the customers or with the assured. Some policies require that the assured report to the police department any thefts in excess of a nominal figure, usually $25.

The policies are written in two forms. The first covers the total number of lockers in the plant, whether rented or not, and the policy is written on an annual basis. The assured is obligated to report the addition of any lockers; if he fails to report such additions, the loss recovery is reduced proportionately per locker.

The second form of this policy is a reporting form. The assured reports only the number of rented lockers and pays premiums on these. Such policies contain a variety of "honesty" clauses that require correct reporting and provide that, in the case of underreporting by the assured, the company's liability shall not exceed the proportion of loss to the property of any locker lessee that the number of rented lockers last reported bears to the actual number of rented lockers at the time of the report. The assured is required to maintain accurate records, and they must be open to examination by the insurance company or its representative at all reasonable hours.

Rates. Rates are based primarily upon the fire and extended coverage rates on contents of the locker plant. A loading is added to cover the other perils insured and also to cover the consequential loss hazard assumed by the policy. The loadings are small, in many cases not exceeding twenty cents per hundred dollars of

coverage, but the insurance company has some margin because the actual liability per locker frequently is less than the limit per locker specified in the policy. At the end of winter, when lockers are almost empty, the actual values may be far below the limits specified in the policy. This enables the insurance company to use what appears to be a low loading in the rate, since the rate is paid on the basis of the full limits.

Underwriting cold storage locker bailee plants. The underwriting of cold storage locker bailee plants is primarily an appraisal of the total loss possibilities. The fire hazard must be examined with care because most of the large losses are the result of fire.

A specially constructed one-story plant usually is preferable to a remodeled building. A fire loss that occurred in a western state illustrates the possible results in a remodeled building. The structure was a one-story-and-basement building, and the locker installation was made on the first floor. A relatively minor fire occurred in the basement, but it was sufficient to weaken the first-floor supports. The entire locker installation was dropped into the basement, resulting in a total loss. There have been other cases in which fire spread into concealed spaces around the locker installation in a remodeled building and considerable water damage resulted before firemen could control it.

Slaughtering, smoking of meats, and other processing may add a considerable fire hazard. It is preferable to have all processing done in a section of the building that is cut off by fire doors from the storage section.

Power interruption is a serious threat. Many plants have an auxiliary power plant, so that any interruption of the electric power will not cause a total loss of refrigeration. The temperature maintained in most plants is about zero degrees Fahrenheit. It takes about twenty-four hours after refrigeration is stopped for the temperature to rise to a point at which food will spoil, provided the storage section is kept closed. An electric power interruption from an electrical storm usually is corrected within twenty-four hours, but there may be widespread damage to transmission lines as a result of sleet storms.

In one section of the Midwest a few years ago a sleet storm resulted in power interruption lasting several days. An insurance company that had insured many locker plants purchased all the portable Diesel-powered electric generators that could be found

and installed them in the powerless locker plants. Many of the emergency generators were too small to maintain full refrigeration, but by keeping the storage sections closed the operators were able to keep the temperatures low enough so that no spoilage occurred before normal power was restored. Since that time, many companies will not accept insurance on cold storage locker plants unless there is an auxiliary source of power that can be used in case of a long interruption of the normal power supply.

Mechanical breakdown is another possible cause of loss. Refrigeration systems operating at low pressures are less likely to have ruptures than those that require a high operating pressure.

There appears to be some difference in the speed with which the refrigerant gases contaminate food. Some gases are highly penetrating and seep into the lockers rapidly if they are released from the refrigerating equipment.

There are dangers in changing from one type of refrigerant to another. Each system is built for the particular type of gas used in it, and no changes should be made without the approval of the manufacturer of the system.

It is desirable for a plant to have two or more complete refrigerating systems so that a breakdown in one system will not result in complete loss of refrigeration.

Experience of the operator is an important factor, and the preferable plant is one with an operator who has been in the business for some time and knows all the hazards. The business prospects of the assured are important, because poor business is likely to result in poor maintenance. Many operators get almost their entire income within a few weeks at one period of the year. A careful budgeting of income is essential to efficient operation, and the newcomer or poor businessman may prove to be an inefficient operator.

Processor's Liability

As pointed out in Chapter XII in connection with the garment contractors floater, there are many manufacturing processes in which a portion of the work is done by subcontractors. The plastics manufacturing industry is one in which this situation is prevalent. The forming of plastic parts of a product is likely to be done by specialty factories and not in the plant of the manufacturer. Makers of mechanical pencils, for example, may have the barrels of

the pencils fabricated by a plastics shop before putting the pencils together with the metal parts made in their own machine shops.

In some cases the processor contracts for the delivery of a certain number of pieces and provides the material. In such cases there is no bailee-bailor relationship, because the processor buys his own material and supplies a completed product (in so far as his work is concerned). In other cases the manufacturer supplies the material, and in these cases the processor is a bailee, with the same responsibility to the bailor as other bailees.

The processor who is a bailee may purchase a casualty insurance policy to protect himself against loss as a result of his liability to the bailor. Another way for him to secure protection is to buy a fire and extended coverage policy from a fire insurance company to cover his interest in the property while it is on his premises. These methods are deficient from the bailee's standpoint because the casualty company coverage does not afford any protection to the interest of the owner of the property and the fire policy does not give coverage against transportation hazards when the bailee transports the property at his risk. When there is a transportation hazard, inland marine coverage is available for the protection of both the assured (the bailee) and the owner (the bailor).

An inland marine policy that protects the bailee against loss as a result of his liability or that protects both the bailee's and the bailor's interests must cover in transit as well as at the premises of the bailee. Under the decisions of the Joint Committee, property does not qualify for inland marine coverage as a processing risk unless there is a transit hazard, even though the policy states that there is transit coverage.

There is a practical reason why the owner of merchandise has come to expect a processor to protect his interest. The owner may have goods out being processed in many different plants, and the arrangements may have to be made on short notice. It is difficult for the owner of goods to call his insurance agent or broker every time he needs coverage at a new location. Only in a few industries, such as the clothing industry, has the business become sufficiently stabilized that the owner of goods can go to his insurance company and get a blanket policy covering him on a blanket basis for all the goods he may have in the hands of processors during the year. In connection with many other industries, an insurance company wants to be kept informed regarding its liability at all times. The

processor knows about how much goods he can process at one time, and an insurance company can issue a policy to him that will cover the amount of goods he is likely to have at risk.

Insurance policies written for processors as bailees usually are on a specified perils basis. The basic coverage is that of a transportation policy, and the hazards covered are divided between those at the location of the processing and those during transportation. At the location of the processor, the policy covers against loss by fire, lightning, windstorm, explosion, riot, civil commotion, vehicle and falling aircraft damage, sprinkler leakage (if the plant is equipped with automatic sprinklers), and water damage.

In connection with valuable merchandise, such as furs, woolens, silks, and precision instruments, the hazards of burglary or perhaps both burglary and theft may be covered.

In the course of transportation, the policy protects against loss by fire, theft, collision and overturn of the transporting vehicle, or, as the wording reads in some policies, "perils of transportation." The coverage for each property is written to fit the assured's needs, and no two policies are likely to read the same.

Rates are based primarily on the rates for fire and extended coverage at the location where the processing is done. If sprinkler leakage coverage and burglary coverage are added, the rates are increased according to the sprinkler leakage and burglary rates for the location. A loading also is added to take care of the transportation coverage, according to the territory where the hauling must be done and the length of the haul. The rate is applied to the amount at risk, or perhaps to the average amount at risk during the course of the year.

In some cases the rate is quoted as a percentage of the gross receipts of the business. In these cases, the premium fluctuates monthly with the gross receipts. As explained in connection with gross receipts rates for motor truck cargo policies, the gross receipts method of paying premiums is satisfactory if the gross receipts fluctuate with the actual values at risk. This is the case in some processing plants, but underwriters try to make certain that a policy is producing a premium commensurate with the hazards covered.

Interpretative Bulletin No. 104 of the Joint Committee on Interpretation and Complaint lists many types of business that are considered eligible for inland marine coverage. The line of de-

marcation is fine in many cases. Sometimes the decision must be made on an individual basis, depending upon whether there is an actual transit hazard in the particular case.

Property on Consignment

There are occasions when property is held on consignment at the risk of the consignee. The consignee is a bailee in that he holds the property of others in his custody, and he is responsible for the use of ordinary care in the preservation of the property from loss or damage. The "Nation-Wide Definition" provides that goods on consignment may be insured under an inland marine policy under certain conditions. Merchandise on consignment for sale or distribution may be insured under an inland marine policy during actual transit and for a period of thirty days after arrival at the premises of the consignee. If the property remains at a fixed location for more than thirty days, the property must be insured under a location policy, such as a fire policy. The theory is that thirty days is sufficient time for the consignee to determine whether the property is to go back or to stay there until sold or otherwise used.

The "Nation-Wide Definition" is more liberal in connection with property that is likely to go back to its source or to be forwarded on to another destination. Property shipped on consignment for exhibit, trial, approval, or auction may be insured while in transit, while in the custody of others, and while being returned. Such property is considered to be in a technical "state of transportation" (even though it is actually at rest during a part of the time) and is eligible for inland marine coverage. Either the bailee or the bailor may insure such property. When insured by the bailee, he has the privilege of insuring it against his legal liability only or of insuring the owner's interest as well. Policies covering such property are issued as transportation policies, and the coverages and rates are similar to those already discussed for that type of coverage. The interests of the various parties should be stated correctly in the policy if the interests of both the bailee and the bailor are covered.

Bailee Storage of Miscellaneous Articles

It happens frequently that a bailee has goods in storage at his risk, and he may desire an inland marine policy in order to secure

the broad coverage inland marine policies frequently provide. It is a principle of inland marine insurance that goods in storage and not subject to a transportation hazard are not proper subjects for inland marine coverage. This is true regardless of whether they are to be covered for the owner or for a bailee.

For example, there have been many attempts to write a policy covering warehousemen's legal liability as an inland marine form. The Joint Committee ruled in their Interpretative Bulletin No. 30 that this is not a proper subject for inland marine coverage. Bulletin No. 43 later modified the ruling to the extent that an inland marine policy may be written if the goods that are to be the subject of the insurance qualify of themselves for inland marine coverage.

In those states that have not adopted the "Nation-Wide Definition," warehousemen's legal liability coverage may be written as an inland marine coverage, even though there is no transit hazard.

These policies are written as transportation policies in the same way as a policy covering property on consignment. The rates depend upon the established rates for the coverage at the location insured plus a loading for any hazards insured for which there are no established rates.

Innkeepers' Liability and Checkroom Liability

Soon after the establishing of the "Nation-Wide Definition," the question arose whether the liability of an innkeeper (or hotel proprietor) could be insured under an inland marine policy. It was contended that the innkeeper was in the position of a bailee and that the situation was similar to that of other bailees whose liability could be insured under inland marine policies.

In its Interpretative Bulletin No. 27 the Joint Committee ruled that the innkeeper is not a bailee in regard to property of guests in the hotel but that he has an absolute liability to his guests for the safety of their property. This liability, which is not dependent upon the principle of bailee liability, is based upon the common law as it specifically applies to innkeepers and as it is modified by the statutes of many states. There is another distinction in that the owner is in partial control of his property, whereas a bailee has complete control of the property in his custody. Since the innkeeper is not a bailee, there is no provision of the Definition under which such liability can be insured under an inland marine policy.

Although the innkeeper is not in the position of a bailee in regard to property of guests in the hotel, he is a bailee in regard to any property that is checked with him in a checkroom incidentally to its transportation. These circumstances include the checking of hats and coats in the hotel dining room and also may include the checking of baggage in a checkroom after the guest has checked out and is no longer registered as a guest. The exact liability of the innkeeper under varying circumstances of checking baggage varies according to the hotel and business laws of the states and will not be discussed here.

The Joint Committee declared in its Interpretative Bulletin No. 59 that property checked by a hotel in a checkroom incidentally to its transportation could be insured under an inland marine policy by either the owner of the property or by the custodian. A hotel may not secure an inland marine policy to cover its liability for the property of guests in the hotel, but it may secure an inland marine policy on the property while it is checked in the hotel checkroom. It is the decision of the Joint Committee that the checkroom situation provides either a bailee-bailor relationship or something close enough to it to justify permitting the issuance of an inland marine policy.

An interesting case decided by the United States District Court for the Southern District of New York in 1948 illustrates both the limitation that hotel laws may place upon the recovery to be had from a hotel when it has checked property and the strict interpretation that may be placed on the limitation when the checking is not done by the hotel corporation itself.[1]

The subject of the dispute was a mink coat that had been checked with a concessionaire in the hotel. The coat was given to an impostor by the checkroom girl, who did not require the presentation of the check. The owner of the coat sued the concessionaire and the hotel for $4,500, the value of the coat. The court decided that the checkroom girl was "guilty of gross negligence in delivering the coat to an impostor without production of the check, and her employer, the Concessionaire, is liable for the value thereof. Its obligation was that of a bailee—whether gratuitous or for hire is unimportant. Wrongful delivery was a breach of its contract and amounted to a conversion of the coat."

The opinion of the court goes on to discuss the concessionaire's

[1] Jacobson v. Belplaza Corp., 80 F. Supp. 917 (1948).

attempt to limit its liability by reason of the New York General Business Law, which does restrict the liability of hotels under certain conditions. The applicable portion of the opinion reads:

> The Concessionaire contends that its liability is limited to $75 under Section 201 of the New York General Business Law. The material portion of this section reads as follows: "as to property deposited by guests or patrons in the parcel or check room of any hotel or restaurant, the delivery of which is evidenced by a check or receipt therefor and for which no fee or charge is exacted, the proprietor shall not be liable beyond seventy-five dollars, unless such value in excess of seventy-five dollars shall be stated upon delivery and a written receipt, stating such value, shall be issued, but he shall in no event be liable beyond one hundred dollars, unless such loss occurs through his fault or negligence."
>
> This section, as originally enacted, Laws of 1855, Chapter 421, applied only to hotel keepers. The portion just quoted was added by the Laws of 1924, Chapter 506. It did nothing more than to create a limited liability for both hotel keepers and restaurant proprietors. There is no hint that the amendment was intended to apply to independent operators of check rooms, such as the present Concessionaire, and it should not be so extended by implication. . . .
>
> The Concessionaire did not operate the restaurant. Nor was plaintiff's coat "property deposited by guests or patrons" of the Concessionaire. Plaintiff was a guest or patron of the Hotel, not of the Concessionaire. Furthermore, the Concessionaire cannot be considered as an employee or agent of the Hotel and, therefore, protected by the limited liability accorded to the Hotel. It was an independent contractor operating, as it admits, the check room for profit.
>
> No New York authority has been cited, and I have found none, holding that an independent operator of a check room in a restaurant is entitled to the limited liability of $75 for property deposited there. I find nothing to that effect in Gardner v. Roosevelt Hotel, Inc., 263 App. Div. 268, 32 N. Y. S. 2d 208, relied upon by the Concessionaire.
>
> I hold, therefore, that the Concessionaire is liable for the full value of plaintiff's coat. With this disposition I think the complaint should be dismissed as against the Hotel.

It becomes evident from this decision that inland marine underwriters who issue checkroom policies need to determine the probable liability of the assured for loss of property. When the assured's liability may be limited by the hotel or general business laws of the state, a more favorable rate may be in order. On the other hand, if the position of the assured is such that he may be held liable for the full value of any property that is lost, the underwriter anticipates occasional losses of considerable size. Patrons of hotels, restaurants, and night clubs are likely to wear fur coats and other garments worth many thousands of dollars. Such property is spotted by criminals, and they make an effort to steal the better garments that are checked.

Underwriters attempt to reach a complete understanding with

the assured about whether the coverage includes only certain specified perils or all liability of the assured for loss of a checked garment. Carelessness on the part of the assured's employees in handing out garments is likely to result in liability on the part of the assured. The policy wording should be such that there can be no misunderstanding of its meaning. It is important to include or exclude carelessness in positive terms.

Questions

1. What situation brought about a rapid increase in the number of cold storage locker plants?
2. Why does the operator of a cold storage locker plant feel the need for a bailees' customers policy?
3. Describe the coverage generally available under a cold storage locker bailee policy.
4. Why do some underwriters believe it is not feasible to insure locker plants against such loss as might result from a prolonged nationwide coal strike and power shortage?
5. Upon what basis are the rates calculated for cold storage locker bailee insurance?
6. Discuss some important considerations in the underwriting of a cold storage locker plant.
7. Under what circumstances may an inland marine policy be written to cover goods in the custody of a processor as a bailee?
8. Why do bailors usually prefer to have the processor arrange for insurance coverage on goods undergoing processing?
9. Upon what theory is it considered proper to issue an inland marine policy covering goods on consignment even though the goods may be actually in storage much of the time?
10. Upon what grounds did the Joint Committee rule that warehousemen's legal liability insurance is not an inland marine coverage when the goods to be insured do not of themselves qualify for inland marine coverage?
11. What are some of the important factors in the underwriting of a checkroom policy for a hotel or concessionaire?

PART VI

The Personal Coverages

CHAPTER XVI

Limited Purpose Personal Policies

Personal Effects Policies

Fire insurance policies on household furnishings provide that ten per cent of the amount of the policy may be applied to a loss that occurs off the premises named in the policy. This is a recent development and was not generally adopted throughout the United States until the early 1940's. Before that time fire insurance policies covered only at the premises named, and there was no off-premises coverage of any kind under such a policy covering at a fixed location. Persons who traveled wanted some form of insurance to cover any loss that might occur to property carried with them.

It was pointed out in Chapter I that masters and seamen on ocean-going vessels could secure a "master's effects" policy (or "slop chest" policy as it was sometimes called), and travelers also could secure ocean marine policies on their property while traveling by sea. Marine underwriters met the demands of travelers on land and issued tourists' policies and travelers' effects policies to cover property while it was being carried by the tourist or was being shipped in connection with his travels.

The tremendous increase in travel following World War I caused a proportionate increase in the demand for insurance protection on the personal effects of travelers. The increasing use of the automobile had a strong effect on the habits of the traveling public. It encouraged travel, and it also permitted travelers to carry more baggage than is convenient when traveling by train. It had been customary for travelers by train to ship their large pieces by express or by train baggage. In either case the carrier was responsible for most of the losses that occurred. When the baggage is carried by automobile and is lost in transit, the owner is responsible personally, and he came to feel the need for insurance protection.

Some of the early forms of personal effects insurance policies covered certain specified perils. Disputes with policyholders arose

because it was difficult to determine whether a piece of baggage had been stolen and was thus covered by the theft provision or had been merely lost or mislaid. Eventually it became clear that an "all risks" type of policy was needed, subject to exclusions that would eliminate claims resulting from negligence of the assured. For a time the pendulum swung completely away from the restricted coverage idea, and an extremely broad form was written. There were few restrictions; the policy covered jewelry and furs in full and contained no restrictions on theft from automobiles. The loss experience was bad, with the result that the present form was settled upon in the late 1930's. It is now filed by the Inland Marine Insurance Bureau for the stock insurance companies and by the Transportation Insurance Rating Bureau for mutual insurance companies in all states that regulate inland marine insurance.

Coverage under the personal effects policy. The policy covers "personal effects such as are usually carried by tourists and travelers, belonging to and used or worn by the assured and/or his wife and their unmarried children permanently residing together." The intent is to cover clothing, luggage, toilet articles, and the many miscellaneous items a person takes with him on a trip.

It is not intended that the policy cover property, such as furniture, that is not ordinarily carried by travelers. A portable typewriter or a portable radio customarily carried and used by the assured would come within the coverage. The problem of determining whether a questionable item is a personal effect such as is usually carried by travelers is similar to the problem of determining what is considered "baggage" under a common carrier's contract to transport baggage. The reader is referred to the discussion of this question in Chapter VI for comparable information.

The personal effects policy contains an exclusion designed to eliminate most of the questions that arise concerning what are not considered to be personal effects. The policy does not cover:

> Automobiles, motors, motorcycles, bicycles, boats, or other conveyances or their appurtenances, accounts, bills, currency, deeds, evidences of debt, letters of credit, passports, documents, money, notes, securities, railroad or other tickets, household furniture, animals, automobile robes or other automobile equipment, salesmen's samples, physicians' and surgeons' instruments, artificial teeth or limbs, merchandise for sale or exhibition, theatrical property of any kind, nor any property specifically or otherwise insured.

The last phrase of the clause is intended to avoid payment for loss to property that may be insured under some other form of

floater policy. For example, many people who carry personal effects policies also have floater policies covering their furs or jewelry. Policies applying specifically would cover the property named, and the personal effects policy is not intended to cover such articles.

The coverage clause provides that the policy insures against "all risks of loss of or damage to the insured property, except as hereinafter provided." The actual extent of the coverage is found in the exclusions.

There are eight paragraphs of exclusions, all of them placing important restrictions on the "all risks" coverage of the policy.

The first excludes loss "while on the premises of the domicile of the assured." There are two reasons for this provision. The first reason is to make the policy comply with that portion of the "Nation-Wide Definition" which provides that tourist and personal effects floater policies "shall exclude hazards while in a permanent residence of the assured." The second reason is to avoid overlapping of coverage between this policy and the fire insurance policy.

The exclusion in the personal effects policy is broader than the provision in the "Nation-Wide Definition." A permanent residence of the assured could be construed to mean the actual residence building and not the grounds surrounding it. The policy goes beyond the requirements of the "Nation-Wide Definition" and excludes coverage while on the premises of the domicile. This is intended to apply to the surrounding grounds and the outbuildings as well as to the residence building itself. This is a reasonable provision in view of the fact that the fire policy covers anywhere on the premises and not merely within the residence building itself.

The word "domicile" is not defined in the personal effects policy, but the Inland Marine Insurance Bureau manual cites a New York Supreme Court case to the effect that, "The domicile of a person is where he has his permanent home and principal establishment, to which, whenever he is absent, he intends to return." [1] This definition is accepted generally as the best description of what constitutes a domicile.

Many of the state insurance departments have amended the "Nation-Wide Definition" to permit the personal effects floater to cover in the domicile of the assured. A standard domicile endorsement is provided that extends the coverage to apply while the

[1] Plant v. Harrison, 36 Misc. 649, 74 N. Y. S. 411 (1902).

insured property is on the premises of the domicile of the assured. An extremely important additional provision of this endorsement is a 100 per cent coinsurance clause applying to all property covered by the policy with the exception of jewelry, watches, articles consisting in whole or in part of silver, gold, or platinum, and furs or articles trimmed with or consisting principally of fur.

Whenever a personal effects policy is extended to cover within the domicile of the assured, the values should be determined and the policy amount adjusted accordingly. Otherwise the assured is likely to have insufficient insurance to meet the requirements of the 100 per cent coinsurance clause and consequently will not receive full payment of any loss that may occur. An additional premium is charged for the extension of coverage to the domicile.

The second exclusion applies to property "while in storage, except at points and places en route during travel and incidental thereto." Property in storage is likely to be subject to many additional hazards. It is without attention for long periods and there would be little opportunity for the insurance company to check pilferage or theft. Many warehouses present serious fire hazards. It also is true that inland marine policies are not intended to cover property in storage when the storage is not incidental to transportation.

The third exclusion, which is peculiar to the personal effects and tourist baggage type of policy, applies to "personal effects in the custody of students while in fraternity or sorority houses, dormitories or on the premises of schools or colleges, except against risk of fire only." Fraternity and sorority houses and dormitories may be left unattended during class hours, and they are seldom locked. Pilferage is a relatively simple matter, whether it be by outsiders or by students. The fact that many students feel free to borrow the belongings of other students is likely to result in an exposure beyond that contemplated by the rates for the policy. The fire risk is not affected to the same extent by this casual way of living, and the insurance companies feel that they can allow fire coverage upon school premises. This student exclusion clause may be eliminated for the payment of an additional premium.

It is interesting to note that this exclusion would not apply to students who live in private homes or rooming houses not on the premises of a school or college. Although a rooming house presents a greater hazard than a private home, there is not the same tend-

ency to leave doors unlocked and the house unattended that is common in many fraternities or sororities.

The fourth exclusion also is characteristic of this type of policy. It limits recovery on jewelry, watches, articles consisting in whole or in part of silver, gold, or platinum, and furs or articles trimmed with or consisting principally of furs to ten per cent of the total amount for which the policy is written and to $100 on any one such article. It is expected that expensive articles of jewelry, watches, and furs will be insured specifically under fur and jewelry policies. The rates for the personal effects policy would have to be increased if more than a limited amount of coverage for such valuable articles were to be provided under it.

The fifth exclusion does two things. First, it eliminates coverage on any loss caused by theft or pilferage of the insured property while it is left unattended in or on any automobile unless the automobile is equipped with a fully enclosed body and has all windows and doors securely locked and the loss is the direct result of violent and forcible entry of which there is visible evidence. That is, theft from an open or unlocked vehicle is not covered. A variation of the clause allows for recovery when the theft is from within a locked compartment even if the doors and windows are not locked. Secondly, the clause provides that any one loss by theft from an automobile shall be limited to ten per cent of the total amount of the policy or to $250. That is, theft or pilferage losses from within a locked and enclosed automobile would be paid up to ten per cent of the policy amount or $250, whichever was less.

This entire clause is inapplicable to losses that occur while the property is in the custody of a common carrier. Such losses are payable upon the theory that the assured cannot be charged with the carelessness of the common carrier and that he needs the protection while the property is out of his own custody. In addition, the insurance company has an opportunity to recover the amount of any such losses from the common carrier. The unattended vehicle exclusion may be eliminated from the policy for the payment of an additional premium.

The three remaining exclusions are common to many inland marine policies. They refer to loss by gradual deterioration, moth, vermin, inherent vice, loss as the result of a process or work done on the article, loss due to breakage of brittle articles (unless caused

by thieves, fire, or accident to conveyances), and loss as a result of war.

Special conditions. The special conditions are typical of those found in many inland marine policies. It is provided that the amount of insurance shall be reduced by the amount of any loss, but, unless provision otherwise is made by endorsement, the assured agrees to immediate reinstatement, for which he shall be charged a pro rata additional premium from the date of the loss.

Other clauses are as follows:

No benefit to carrier or bailee.
Requirement for reporting loss and filing proof of loss.
No loss will be paid that has been recovered from others.
Actual cash value clause.
Payment within thirty days after acceptance of proof of loss.
Sue and labor clause.
Suit clause.
Cancellation clause.

Several variations in the coverage are written. A $25 deductible clause may be used and when used is applicable to all losses. A credit in the premium is allowed for this restriction. Additional persons who reside permanently with the assured may be covered if an additional premium is paid for each. Loss resulting from theft, larceny, burglary, robbery, mysterious disappearance, vandalism, and malicious mischief may be excluded for a substantial reduction in premium. This exclusion is worded so that it will fit in with the coverage under a residence theft policy without any overlapping of coverage.

The personal effects policy may be extended to cover furniture and furnishings belonging to and used by any person insured by the policy while the property is contained in an auto trailer or trailerhome owned or leased by the person insured. The endorsement excludes from such coverage equipment and accessories built into and forming a permanent part of the trailer and equipment usually attached to an automobile. It also excludes loss due to marring, scratching, dampness of atmosphere or extremes of temperature, mechanical breakdown, or damage to electrical apparatus caused by electricity unless fire ensues and then only for loss by such ensuing fire. An additional premium is charged for this extension to cover the contents of auto trailers.

It is permissible to issue blanket personal effects policies covering conventions and tours of 100 persons or more. These policies may

provide for the issuance certificates to each individual involved or may be on a blanket basis. They are written for periods not exceeding ninety days. The rates are specially computed by the rating bureau having jurisdiction according to the conditions of each convention or tour.

Rates. The rating system used for personal effects policies is somewhat different from that used for other inland marine policies. The rate is a flat charge plus a percentage of the policy amount. This method of rating is based upon the theory that assureds having "all risks" policies report some minor claims regardless of the policy amount. That is, the losses of hats, fountain pens, and similar small articles occur with about the same frequency for small policies as they do for large policies. A substantial minimum premium must be charged to take care of these losses. The percentage charge is intended to take care of the larger and less frequent claims. The credit for the deductible clause is applied only to the flat charge, inasmuch as the deductible eliminates the smaller claims but does not have much effect on the larger claims.

Underwriting personal effects policies. An important problem in underwriting personal effects coverage is the short-term policy. Customary short rates are charged for policies issued for less than one year. The result is that an insurance company is likely to receive an inadequate premium for a period during which the exposure is high. For example, a policy in the amount of $1,000 may produce a premium of $25 for one year. The person who goes on a trip of three or four weeks may get a month's coverage for approximately $5.00, in spite of the fact that the property is exposed constantly during the entire policy term. Many companies discourage the issuing of short-term policies and try to persuade their policyholders to carry the coverage on a year-round basis. In this way the insurance company gets a spread of risk over the entire year, and there are some periods during which the exposure is less than when the assured is on a trip. The insurance companies point out to their policyholders that they need the coverage all the year round because they are likely to have losses outside their domiciles in their home cities. The policy covers anywhere away from the assured's domicile, and he may have losses while at his place of business, while commuting to his work, or while out for an evening's entertainment.

Even though the premium may be small and the amount of the

policy limited to a few hundred or a thousand dollars, underwriters keep in mind the fact that "all risks" coverage gives the assured an opportunity to make claims that cannot be checked or substantiated. The moral hazard is extremely important, and the personal integrity and claims record of each prospect are investigated carefully.

Tourist Baggage Policies

Similar in purpose to the personal effects policy, but more restricted in its coverage, is the tourist baggage policy. The personal effects covered by this policy are listed specifically as "wearing apparel, toilet articles, canes, parasols, umbrellas, printed books and music, photographs and their frames, musical instruments, portable typewriters, photographic apparatus and supplies, toys and games, sportsmen's implements, travelers' clocks, watches, jewelry, plate and plated wear, trunks, suit cases, bags and other receptacles of travel." It is further specified that coverage applies only to property belonging to and used or worn by the assured and his wife and their unmarried children permanently residing together.

The policy clause describing property not covered is shorter and excludes specifically "pianos, conveyances of any type and their motors and their appurtenances, salesmen's samples, merchandise for sale or exhibition, and theatrical property of any kind." Also excluded are any property not described in the list of items insured and any property specifically or otherwise insured.

The specific listing of the property covered results in a much more limited group of insured items than is covered by the more general description of the personal effects policy. For example, a portable radio could be considered a personal effect such as usually is carried by tourists and travelers. As such it would be covered under the personal effects policy, but it is not covered by the tourist baggage policy because it is not listed.

The perils insured against by the tourist baggage policy are listed specifically. It is not an "all risks" policy, and the coverage is much more limited than that of the personal effects policy. Fire and lightning damage are covered under all circumstances except when the exclusions provide otherwise. The perils of transportation and navigation are covered while the property is in due course of transit on land or water in the custody of any railroad,

express, transfer, transportation, steamship, or steamboat company or licensed public truckman, but the perils of transportation are not covered while it is in transit in the assured's custody.

The policy also covers loss due to the stranding, sinking, burning, or collision of a yacht on which the assured may be a guest. If he has hired the yacht or if he is the owner, there is no coverage for these hazards.

Damage due to collision is covered if the property is contained in an automobile at the time of the collision. Collision damage is not covered while the property is in a vehicle other than an automobile or if it is not in a vehicle at the time of any loss. Under the motor vehicle laws of many states the term "automobile" includes any self-propelled motor vehicle except a motorcycle. This interpretation would mean that collision damage occurring while the property is in a bus or truck would be covered. It is likely that the courts would resolve any doubt on this point in favor of the assured and allow payment of such a claim.

Theft of property that is in the custody of a common carrier is covered. There also is coverage for the theft of entire trunks, traveling bags, or other shipping packages, with their contents, from rooms occupied by the assured or when checked in any hotel, boarding house, or public parcel room, provided the local police authorities are notified immediately after discovery of the loss. This is a narrow theft coverage. It does not cover the theft of garments from checkrooms, nor does it cover the theft of a bag from the lobby of a hotel if it has not been checked. Neither would it cover the theft of property from a hotel room unless the trunk or traveling bag and its contents were taken.

It can be seen that a tourist may have many losses that are not covered by this policy. It does not cover articles that are lost but are not stolen under the special conditions described. Several exclusions further restrict the coverage. No coverage is provided within a permanent residence of the assured.

An exclusion peculiar to this policy provides that there is no coverage on property located in any place where the assured ordinarily keeps an automobile. The principal effect of this exclusion would be to eliminate the fire coverage in such a location, for it is seldom that any of the other hazards covered by the policy could cause a loss in a place where the assured would keep an automobile.

There is an exclusion regarding storage warehouses except at points and places en route during travel and incidental thereto. The rules of the Inland Marine Insurance Bureau call attention to the fact that fur coats in storage warehouses are not covered and provide that it is not permissible to endorse policies to cover them.

Jewelry, watches, and furs are covered only to twenty-five per cent of the policy amount and for not more than $100 on any one such article. A student property exclusion is similar to that of the personal effects policy and may be eliminated for the payment of an extra premium. Other exclusions and conditions are similar to those appearing in the personal effects policy. The policy may not be extended to cover physicians' instruments and kits.

The rate and minimum premium for the policy are low. The customary short-rate cancellation table applies for policies in effect for less than one year. The only difference in rate between this policy and the personal effects policy is that no flat charge applies to the tourist baggage policy. The percentage rate is the same.

Considerable space has been used to describe this policy because of the confusion existing between the tourist baggage and the personal effects policies. Often the two are sold interchangeably without a clear understanding of the wide difference in coverage. The tourist baggage policy provides extremely limited coverage, and its use is likely to result in policyholder dissatisfaction unless the nature of the policy is made clear to the purchaser. In all cases the policyholder should be given an opportunity to examine the two policies and to make his own choice upon the basis of the cost, so that he will not expect to receive the coverage of the personal effects policy for the price of the tourist baggage policy.

Railroad, Steamship, and Airline Tourist Baggage Policies

The rules of the Inland Marine Insurance Bureau contain a provision that the tourist baggage rules shall not apply to "policies sold through railroad or steamship ticket agencies or bus line ticket agencies." Several insurance companies have arrangements with ticket agencies for the sale of tourist baggage insurance policies. These are limited coverage policies similar in their effect to the tourist baggage policy described above. There is no underwriting involved because the policies are sold to anyone who applies at a ticket agency. The sale of these policies can be successful for an

insurance company only if it has widespread connections with railroad and steamship companies or bus lines, so that the policies can be sold in large numbers and at minimum cost. The premium for each policy is small, amounting to only a dollar or two, and the coverage is so restricted that claims are relatively few.

Diplomatic, Military, and Government Service Policies

The tremendous increase in the number of Federal Government employees during the 1930's and the war years of the early 1940's brought a demand for an insurance policy that would cover more than personal effects of the type ordinarily carried by travelers. In the diplomatic and military services, there are many people who are assigned to various locations for periods of several weeks or several months at a time. They take their families with them whenever possible and carry much more in the way of personal belongings than an ordinary traveler carries. Because there is no standard form that fits the need, many insurance companies have developed special forms.

Although there has not been any uniformity in the special service policies, they are similar to each other in their coverage. The policies are basically the personal effects policy. The description of property covered is expanded to include household furniture and professional equipment of the sort that might be carried by military or diplomatic personnel. Some of the service policies are of the "all risks" type, but many of them cover specified perils.

Specified perils policies seem to be the preferred type. Many underwriters do not consider it feasible to insure against mysterious disappearance for policyholders who are required to travel about at frequent intervals, taking with them all the insured property. The specified perils covered by these policies include burglary, theft from within locked vehicles, fire, lightning and windstorm, and loss from transportation hazards on land or water. The exclusions are similar to those of the personal effects policy and limit the amount that may be recovered for loss of such items as jewelry, watches, and furs.

This type of policy is not issued to any great extent during time of peace because the personal property floater is more nearly comprehensive in its coverage. Many insurance companies are reluctant to issue personal property floaters to government personnel who were likely to be assigned overseas in or near a theater of war.

Insurance on Personal Furs

The need for a broad insurance policy is obvious to most women who own fur coats. The cost of a fur coat represents a large investment, and such a coat is one of the average woman's most prized possessions. A fur coat does not stay in the relative security of the home but is worn to work or to social functions where it may be stolen or lost. It is difficult to identify a recovered fur garment because there are few distinguishing marks. This makes it easy for thieves to sell or to pawn stolen garments.

The fur coat floater policy was one of the earliest of the "all risks" types of inland marine insurance policies. It was written first for a carefully selected number of policyholders, because insurance companies were afraid of the broad coverage provided by the policy. Apparently there was a feeling that only the wealthier people who could easily afford fur coats would be acceptable policyholders. Fur coats now are purchased because of their warmth and long-wearing qualities as well as for display. The demand for individual fur coat policies continues because many people who own fur coats do not have a large investment in other personal property.

The protection afforded by the fur floater policy is one of the broadest available on the property of an individual. It covers against "all risks" of loss or damage with only two exclusions. The first exclusion relates to loss or damage occasioned by "gradual deterioration, moth, vermin or inherent vice." It was customary at one time to exclude damage sustained as the result of any process or while the garment was being worked upon and resulting therefrom. The insurance companies have been able to eliminate this limitation. If the insurance company should be obligated to pay for a loss resulting from the processing or from work being done on a coat, there would be a good chance of the company's being able to collect from the processor under a subrogation agreement.

The second exclusion provides that the company shall not be liable for loss or damage occasioned by "war, invasion, hostilities, rebellion, insurrection, confiscation by order of any government, public authority, or risks of contraband or illegal transportation and/or trade." A possible application of this exclusion in peacetime might be if a coat were confiscated by customs authorities because of an attempt to smuggle it into a country.

The property that may be covered by the fur floater policy con-

sists of furs that are the property of the assured and members of his or her family of the same domicile. All insured property must be scheduled specifically; there is no provision for miscellaneous or blanket items. Several pieces that constitute a set, such as a coat, muff, and hat, may be scheduled as a single item. Because the policy does not contain an actual cash value clause, it can be made a valued policy by listing the "value" of the items on the schedule.

Many companies prefer to use the term "amount of insurance" or "limit of liability" at the head of the column showing the amount listed for each garment. This makes it necessary for the assured to prove the value of the coat in case of loss and protects the insurance company from a possible obligation to make a payment in excess of the actual value if the value of the coat has decreased since it was insured.

A phrase to the effect that coverage is effective on the property "whilst in all situations" makes it a world-wide coverage.

It is permissible to insure fur-trimmed garments as well as garments made entirely of fur.

Other clauses in the policy, which follow those generally found in inland marine policies, are the following:

No benefit to carrier or bailee.
Requirement to report loss and submit proof of loss.
Loss payable within thirty days after acceptance of proof of loss by company.
Suit clause.
Cancellation clause.

Rates. Rates and minimum premiums for the fur floater policy are the same in all parts of the United States. Three-year policies are written at two and one-half times the one-year rates and minimum premium. There does not appear to be much difference in loss experience in different parts of the country.

The feeling of underwriters is that the principal hazard to fur coats is the personal hazard of the wearer. Fire losses are relatively infrequent, and many other losses are avoidable through care on the wearer's part. The chances of loss by theft, by checkroom errors, and by mysterious disappearance seem to be about the same everywhere. The loss experience is that of the average fur coat owner and, unlike the loss experience with many other types of coverage, does not relate itself to territory.

Underwriting fur floater policies. Successful underwriting of fur floater policies depends largely upon three factors: (1) con-

ditions in the fur garment trade, (2) accuracy of the value placed upon insured garments, and (3) the moral hazard in connection with individual assureds.

There is considerable fluctuation in prices as a result of conditions in the fur garment trade. During periods of rapidly rising prices there is little change in the value of a garment from the time a policy is written until expiration of the policy. The normal depreciation in value from wear and tear is offset by the higher prices.

In a period of deflation there is a double depreciation in value. In addition to the normal depreciation from wear and tear, there may also be a considerable drop in value as a result of price decreases. Underwriters usually allow for depreciation when policies are renewed.

Another situation in the fur garment industry that complicates the work of the underwriter is the practice of developing unusual names for common animals in order to enhance customer appeal. For example, dyed rabbit may be sold under any one of fifty or more different names, most of them giving no clue whatever to the true identity of the animal from which the fur came.

Some of these names, such as "Hudson seal" for dyed muskrat, have become well established in the fur trade, and the underwriter has a chance to check the true value of such a garment. Other names are the result of vivid imaginations on the part of fur dealers, and the underwriter has no way of knowing whether the price paid is in line with actual values for that type of fur. Frequently the last word in the name indicates the animal from which the fur is taken. For example, a "Hudson seal dyed muskrat" is really a muskrat fur that has been treated and dyed to resemble seal.

In the case of new garments, underwriters attempt to secure the name of the store from which the garment was purchased, the date of purchase, and the exact price. The information may prove to be entirely inaccurate if, for example, the assured says merely, "The coat was bought last summer for about $400." It is desirable to secure a copy of the invoice or bill of sale if possible. The cost price of a new coat may be accepted as the correct value at time of purchase if the store is known to be reputable.

It is desirable for the underwriter to keep a list of the principal fur shops in the territory from which fur coat business is received in considerable volume. Whenever a high-valued coat is insured

and the application shows that it was purchased from an unknown store, underwriters usually investigate to make certain that it is correctly valued.

The problem of determining value is more difficult when the garment has been in use. It is not desirable to accept the valuation put upon the garment in an insurance policy issued by another company, for the original underwriting may have been careless.

The first step is to try to determine the original purchase price and exact date of purchase, the same as for a new coat. If this is not possible, it may be desirable to require an appraisal, especially if the value is more than a few hundred dollars. It should be made clear to the furrier who makes the appraisal that the present value of the coat is the amount desired. There have been many cases in which the appraiser set the value at what he would charge for a new coat of similar quality.

Always to be kept in mind is the fact that if the garment is valued at too low a figure, the insurance company is not getting sufficient premium for the risk it is carrying. If the value is set too high, there may be difficulty in arriving at a fair settlement in case of a loss.

The moral hazard in connection with each policyholder is probably the most important single factor in successful fur floater underwriting. Many insurance companies feel that professional entertainers are more likely to have losses than average policyholders. They feel this not so much because of any idea that professional entertainers are dishonest as because their business requires that they be seen in many places and they must wear their furs under circumstances that make them easy victims for thieves.

Property of students may be subject to extra hazards because of their habit of borrowing and lending clothing. Dormitories and sorority houses may not be so well supervised as the average private home. The property of persons who live in hotels may be subject to frequent losses because of the ease with which many hotel rooms can be entered by a sneak thief or burglar. Expensive furs offer the underwriter the possibility of a large loss, and they are more likely to be stolen because they offer a greater temptation to a thief than furs of low value.

Underwriters recommend to their assureds that some identification be sewed inside the lining or that several skins be marked on the inside with indelible ink. Many lost or stolen coats are

recovered by the police, but the owners frequently cannot claim them because they are unable to make a positive identification.

Personal Jewelry Policies

The growth of jewelry floater insurance for individual policyholders parallels the growth of fur floater coverage. Years ago, in grandmother's day, a married woman had a diamond engagement ring, a wedding ring, and perhaps a gold watch. The man of the family carried a watch and a few men wore rings. Values were comparatively small, and there was little hazard of loss by holdup or burglary. It was only the extremely wealthy who had much jewelry and felt any need for insurance protection. Today many women have several pieces of jewelry, and the total value of watches and jewelry in a moderately successful family will be many hundreds of dollars. In no other respect has the spread of wealth during the past generation been so much in evidence as in the increased use of jewelry by people of modest means. This fact plus the increased hazard of loss under today's conditions has brought about a need for broad insurance protection on personal jewelry.

The coverage provided by the jewelry floater policy is the same as that provided for furs except that the jewelry coverage contains a "pairs and sets" clause. This clause reads:

> Where any insured item consists of articles in a pair or set, this policy is not to pay more than the value of any particular part or parts which may be lost, without reference to any special value which such article may have as part of such pair or set; nor more than a proportionate part of the insured value of the part or set.

If this clause were not a part of the policy, the assured might claim that the loss of a single item of a set destroyed the entire value of the set. The adjuster who is handling a loss under the "pairs and sets" clause may have a difficult task in determining what is a fair proportionate value for the lost item, but he has a contractual provision upon which to base his adjustment.

Each item must be individually scheduled, and no miscellaneous items are permitted. An amount of insurance is indicated for each item of the schedule. If the amount is shown as a limit of liability, the assured would be obligated to prove the value in case of loss.

It is possible to issue jewelry policies on a valued basis; that is, the amount stated in the policy for each item can be agreed to be the value of the item. Since the value listed in such a policy is the

amount to be paid in the event of loss, it is important that the value be established accurately by appraisal or by verifying the cost price.

The policy is designed for the insuring of personal jewelry, but it is permissible to insure under the jewelry policy such articles as silverware, plated ware, cigarette cases, trophies, and other articles made of precious metals or similar in value to jewelry.

Provision is made for the insuring of furs under the jewelry policy. Originally this was done in order to avoid the two minimum premiums that would be necessary if separate jewelry and fur policies were written. The policies are so closely similar in coverage that there is no reason why the two types of property should not be insured under the same policy. The rates for insurance on furs are the same under a jewelry policy as under a fur policy.

Rates. The rates for jewelry coverage are graduated according to the amount of the policy. Underwriters believe that only a small portion of a large schedule of jewelry would be exposed to loss at any one time, and this justifies a lower rate on a large amount of jewelry. The first rating group is for coverage not exceeding $5,000 in amount. The entire amount of any jewelry valued at $5,000 or less is considered to be subject to a single loss, and the one rate applies in this bracket. The amount in excess of $5,000 up to $10,000 is allowed a lower rate, and further reductions are allowed for higher amounts.

The rules of the rating bureaus provide for a $50 deductible clause. The credit is ten per cent of the premium on policies of less than $75,000 and five per cent for policies in excess of $75,000. The $50 deductible eliminates small losses and is thought to have the effect of influencing the policyholder to be careful with his jewelry. The percentage of credit is smaller on the large policies because the deductible is less important in relation to the size of the pieces of jewelry insured under a large schedule.

Many owners of large amounts of jewelry make it a practice to keep the most valuable pieces in safes or safe deposit boxes except when they are actually in use. No credit is allowed in the rates when this is warranted to be the case. One of the reasons for lower rates on large schedules of jewelry is the probability that much of it will be kept in a safe when not in use. No additional credit is considered justified.

Underwriting jewelry policies. There is a considerable difference in the salvage possibilities with different types of stones. Diamonds have high salvage value even when they have passed through a severe fire. The outside of a diamond will char, but frequently it can be cut down and a portion of the value salvaged. This is less true of some of the softer gems, which are likely to be ruined completely by intense heat.

It is important that all jewelry be described accurately in the assured's application for a jewelry policy. Occasionally an application for a jewelry policy may list "one diamond ring," without any qualifying description. Such an inadequate description makes it impossible to determine whether the ring is correctly valued and, in case of loss, makes it impossible for the adjuster to find out whether the claim is being made for the insured ring. A complete description of a piece of jewelry should include the following information:

1. The name of the stone or stones. If the stone is synthetic or reconstructed, this should be indicated.
2. The weight of the stone or stones. This weight usually is expressed in carats. There are approximately 151.5 carats in a troy ounce.
3. The cut of the stone or stones. For example, the diamond may be "full cut," with 58 facets, including the top and bottom, or it may be "single cut," with only 18 facets.
4. An accurate description of the metal used for mounting or, in the case of items not containing stones, of the metal used to make up the piece. The gold used for jewelry making usually is an alloy, because pure gold is soft and wears away quickly. The fineness of a gold alloy is expressed in terms of how many twenty-fourth parts of the alloy are pure gold. The units are called "carats" or "k." Pure gold is 24 k. A 10 k. gold alloy is ten twenty-fourths pure gold and fourteen twenty-fourths alloy. (This use of the word "carat" means a twenty-fourth part and must not be confused with its use to indicate the weight of a precious stone.)
5. A general description of the piece, including its intended use, shape and size, color decorations, and any peculiarities that would help to identify it in case of loss.
6. Photographs, when the value is such that extensive efforts would be justified to secure recovery in case of loss or when the items are such that descriptions are difficult.

7. In the case of watches, the name of the manufacturer, the number of jewels, the size, and a general description of the case and works, serial numbers, and any special identification such as pawnbrokers' marks.

The underwriter is on the alert for trade terms that are not indicative of the true nature of a material. For example, "German Silver" does not contain any silver whatever but is an alloy of nickel, copper, and zinc. The term "full jeweled" sometimes used in connection with watches is an inaccurate term, and the description should give the actual number of jewels.

Sterling silver must have 925 parts of silver and 75 parts of copper. When the term "silverware" is used, as it frequently is, the description should indicate the exact proportion of silver, since there is no such standard for silverware as for sterling silver. Gold- or silver-plated ware has a coating of the precious metal, usually put on by an electrolytic process. A gold-filled article has a thicker coating of gold put on by soldering a sheet of gold to a base metal. The description should indicate the proportion of gold and the degree of fineness, such as "1/10 18 k. gold-filled."

The previous loss record of the assured is one of the most helpful pieces of underwriting information. The record of losses usually is required in detail, and underwriters do not accept such general statements as "negligible" or "few small losses." A series of small losses may indicate careless habits that are likely to culminate in one or more large losses. Credit reports are desirable in order to check the accuracy of statements on the application for a policy and to determine the assured's personal history.

When the assured is the possessor of valuable pieces of jewelry purchased abroad, it may be worth inquiring to see if the customs declaration agrees with the statements in the application for insurance. The prospective assured may be asked to furnish such information in connection with large and valuable items.

When gambling debts become extremely pressing, jewelry that is sold to pay them may be reported to the insurance company as lost. Sometimes the motive is to recoup the gambling losses from the insurance company; sometimes the real motive is to prevent husband or wife from learning what was done with the jewelry.

The recovery of stolen jewelry is a specialty of loss adjusting that will be discussed in Chapter XXI. Careful underwriting

often is of great help to the adjuster after a loss has occurred. Many times a loss can be kept at a minimum if the underwriter has secured in advance all the information the adjuster needs to identify and prove ownership of jewelry recovered from criminals.

Wedding and engagement ring insurance. Jewelry floater policies are not written to cover jewelry or furs belonging to more than one person not related, even though they are residing together. An exception is made in the case of engagement rings, wedding rings, and guard rings, which may be insured prior to the wedding in the names of the two interested parties as their interests may appear.

The question of ownership of an engagement ring can prove troublesome to an insurance company (and to the interested parties) when an engagement is broken. When the policy is made out in both names, the insurance company can step out of a dispute by paying the proceeds of any loss into a court and letting the court decide who is entitled to them. A case decided in 1947 by the Texas Court of Civil Appeals gives an interesting view of an engagement ring dispute.[2]

The plaintiff had secured $1,500 insurance on an engagement ring, the policy being written in his name. He gave the ring to his fiancée as an engagement ring and procured a marriage license. While it was in the possession of his fiancée, the ring was stolen, and subsequent thereto the plaintiff refused to carry out his agreement to marry. He sued the insurance company for the loss of the ring. He contended that the ring was still his, or at least that he still had an interest in it because the gift of the ring was a conditional gift. The court held that the gift of the ring, even if conditional, conferred title to the donee. It was held that the plaintiff had no interest in the ring at the time of the loss, had not sustained any legal loss, and therefore could not recover from the insurance company.

Social usage holds that the engagement ring and other gifts of value should be returned in case the engagement is broken off. There are instances in which the gifts are not returned following the breaking of an engagement, and the insurance company may find itself in the middle of an acrimonious dispute if the policy is written in the name of only one of the interested parties.

[2] Ludeau v. Phoenix Ins. Co., 204 S. W. (2d) 1008 (Tex. Civ. App. 1947).

Gold and Silverware Insurance

It is permissible to insure almost any article of gold, silver, or other precious metal under a jewelry policy, but sometimes it is advantageous to both assured and insurance company to use a slightly different coverage for gold and silver articles that are not jewelry. Many insurance companies issue a gold or silverware policy for such purposes. It is not a regulated form, and the form and rates vary somewhat between companies. Such a policy is not intended to cover gold and silver jewelry. Jewelry is something for personal adornment, as distinguished from silverware to be used at the table.

The coverage under a silverware policy usually is similar to that granted for jewelry. It is customary, however, to exclude damage resulting from denting, marring, and scratching, unless caused by fire, lightning, windstorm, earthquake, explosion, thieves, malicious mischief, or accident to conveyance upon which the insured property is being transported. It is somewhat more restricted in its coverage in this respect than the jewelry policy. The policy also may contain a coinsurance clause and permit blanket items, or it may be a scheduled policy with each item listed.

The "Nation-Wide Definition" provides that a silverware floater policy may not cover in the permanent residence of the assured. Many states, however, have modified the Definition to permit silverware coverage in the assured's residence.

The rates for silver and gold policies usually are somewhat less than the first two brackets of rates for jewelry policies. A rate frequently used is one per cent of the policy amount. The coverage is somewhat restricted as compared to the jewelry coverage, and gold and silver articles used in a residence are subject to less hazard than jewelry that is worn outside.

Wedding Presents Floater Policy

The wedding presents floater policy is designed to cover the property of a bride during the temporary period in which she accumulates the presents and before she and her new husband are settled in their home. It is customary for presents to be sent to the bride-to-be as soon as the invitations are received. Such presents are considered to be the property of the bride, but there is a joint interest on the part of both the bride and the groom as soon as they are married. It is proper to follow the same procedure as in con-

nection with engagement rings and make out the insurance policy in the names of the bride and the groom, as their interests may appear.

Inland marine rating bureau rules provide that no insurance shall be granted beyond ninety days after the date of the wedding. It is intended that a permanent policy of some form shall replace the wedding presents floater as soon as the bride and groom are settled.

The scheduled property floater policy is used as the basic policy, and a form is attached to give the exact coverage desired. The standard form covers against "all risks" of loss or damage and is similar to the jewelry floater policy in its coverage. The first two exclusions are identical to those described for the jewelry floater policy, with the additional exclusion of "damage sustained due to any process or while being actually worked upon and resulting therefrom."

A third exclusion makes the company not liable for loss resulting from "breakage, marring or scratching of china, glass, marble, earthenware, furniture and other articles of a brittle or fragile nature, unless caused by fire, lightning, windstorm, earthquake, explosion, thieves, malicious damage or accident to conveyances." It is permissible to eliminate this exclusion for the payment of an extra rate.

Another provision, which is in effect an exclusion, states that the policy does not cover "realty, animals, automobiles, motorcycles, aircraft, bicycles, boats, motors or other conveyances or their appurtenances, automobile robes, accounts, bills, currency, deeds, evidences of debt, letters of credit, passports, documents, money, notes, securities, railroad or other tickets."

There is an "other insurance" clause which makes this policy excess insurance over any other policy that would apply had this policy not been effected. There is also a coinsurance clause, which may be filled in for the percentage determined by the rate charged. The other insurance and coinsurance clauses may be waived if the articles to be insured are scheduled specifically on the policy.

Two sets of rates are provided. The first set is used when a fifty per cent coinsurance clause is attached to the policy. The second set of rates is somewhat lower and is used when a 100 per cent coinsurance clause is attached.

Underwriting of wedding presents floaters follows the same lines

as underwriting for jewelry and fur floaters. Alert insurance agents use the policy to get leads to new policyholders. Most brides are proud of their wedding presents, and their fathers and grooms are good prospects for a wedding presents policy. Following the wedding trip, the agent has an opportunity to call on the bride and groom to arrange for permanent coverage.

Questions

1. Trace the development of the personal effects floater insurance coverage.
2. What type of property is meant by the term "personal effects"?
3. Why is a 100 per cent coinsurance clause added to a personal effects policy when it is extended to cover in the domicile of the assured?
4. Why does the personal effects policy provide only a limited amount of coverage on jewelry and furs?
5. Compare the coverage provided under a personal effects policy and that provided under a tourist baggage policy.
6. In what respects does the coverage under a military or government service policy differ from that under a personal effects policy?
7. Why are rates for fur floater policies the same in all parts of the country?
8. What information does the underwriter need regarding a fur coat that is to be insured?
9. Explain the purpose of the "pairs and sets" clause that appears in a jewelry policy.
10. What information does an underwriter need regarding jewelry that is to be insured?
11. Distinguish between the coverage under a jewelry policy and that usually provided under a silverware policy.
12. Why is the wedding presents floater policy frequently used by insurance agents as a lead toward securing other insurance business?

CHAPTER XVII

Fine Arts and Antiques

FROM THE DAWN OF CIVILIZATION, people have treasured certain articles far beyond any value that might be placed upon them because of their utility. The paintings and statuary of the old masters are venerated because of their beauty and grace. Objects of antiquity are revered, sometimes solely as a result of their age but more often because the ancient pieces that survive are those that have a lasting beauty. Near the end of the nineteenth century and the beginning of the twentieth, some insurance companies and underwriters began to give practical recognition to the fact that antiques and works of art may have a cash value in excess of their utility value. It was seen that this market value might properly be insured.

For many years after fine arts insurance first was written, the only persons interested in such coverage were collectors, museum officials, and dealers. During recent years, however, many people have purchased works of art. People of culture and taste like to be the possessors of art objects even though their "collections" are small. There are many people who take every opportunity to add to their collections of antique furniture. The result is that fine arts insurance today is written for a large number of people.

The "Nation-Wide Definition" recognized the need for inland marine coverage in its statement that fine arts floaters can be written to cover "objects of art such as pictures, statuary, bronzes and antiques, rare manuscripts and books, articles of virtu, etc., but excluding stained glass windows and carved glass used for commercial purposes." However, an interpretation of the "Nation-Wide Definition" later provided that art glass windows of the character of fine arts may be insured under an inland marine policy even if they are permanently installed in a building.

The manual of the Inland Marine Insurance Bureau defines fine arts to include "paintings, etchings, pictures, tapestries, and other bona fide works of art (such as valuable rugs, statuary, marbles,

bronzes, antique furniture, rare books, antique silver, manuscripts, porcelains, rare glass and bric-a-brac) of rarity, historical value or artistic merit." "Articles of virtu," mentioned in the "Nation-Wide Definition," may be defined as articles having artistic merit.

It often is difficult to determine whether objects have the qualities of fine arts or antiques, even with the elaborate definitions inserted in the Definition and the manual. How can an insurance underwriter or insurance agent know whether a specific object would qualify for fine arts coverage?

Several tests can be applied. First, does the object have any quality that makes it worth more than its utility value? This additional value must be something that would appeal to many people and may not be solely a sentimental value that would attach to an object belonging to the members of a single family. For example, a bedspread worked by the assured's mother would not qualify as a fine arts object solely because of the assured's sentimental attachment. There must be a quality that would make it appeal to other people who are not influenced by the sentimental attachment.

A second test to be applied is that of rarity or historical value. The personal letters of George Washington and of Abraham Lincoln are excellent examples of objects that are both rare and of historical value. Once their contents have been copied and recorded, these letters have no practical value, yet they do have a considerable monetary value.

Antique furniture has a practical value, but it has a commercial value in excess of the utility value. This is due largely to its age, and a puzzling problem for the underwriter is to determine how old a piece of furniture must be before he is justified in insuring it as an antique. An arbitrary rule used by many insurance adjusters is that an object must be approximately 100 years old before it can be considered antique. The rarity of the object also has an effect, as well as any artistic qualities that may be present.

It often is advisable to secure the opinion of an art appraiser in connection with paintings. Many contemporary paintings are now considered works of art, but it is difficult for an untrained person to tell which ones will survive as such. Styles and customs change from one generation to another, and the ultimate measure of the value of fine arts objects is the value the public puts upon them when they are in the market.

Justification for Inland Marine Coverage on Fine Arts

Many objects of art are more easily damaged than ordinary household furniture and appliances. The paint on some of the old paintings may peel if there is too much moisture in the air, and a cut or scratch may do irreparable damage. The value of many fine arts pieces makes them a constant temptation to the thief.

Art collectors were among the first to feel the need for a broad insurance protection that went beyond the coverage available in the fire, lightning, and windstorm insurance policies available fifty years ago. Fire insurance companies were restricted by law to narrow lines of coverage, and they did not feel that they were justified in seeking relaxation of the legal restraints. Marine underwriters were relatively unhampered by such restrictions, and they had had much experience with an "all risks" type of insurance coverage in their ocean marine operations. Inland marine underwriters, therefore, were willing to write a broad coverage insurance policy for art collectors. This has developed into a tradition, and coverage on fine arts objects now is written as a regular inland marine line of insurance despite the fact that much of the property so insured is not subject to transportation hazards.

The property of some owners of fine arts is subject to a frequent travel hazard. Art collectors are justifiably proud of their possessions and wish to exhibit them. Pictures and other collections of art objects are loaned by one collector or one museum to another in order that more people may have the pleasure of seeing them. The result is that art objects are shipped about the country more frequently than household furniture or other equipment. It is troublesome for the owner to arrange for insurance each time he wants to send some of his collection out for exhibition. The floater coverage of the inland marine policy fits the needs of the art collector more closely than would a fixed location policy.

Private Fine Arts Collections

Fine arts may be divided roughly into three groups. They are (1) private collections, (2) commercial or dealer property, and (3) museum or art gallery collections. Commercial and museum property is underwritten largely according to the individual needs of each assured. There is little standardization; the coverage varies with the needs of the assured and the rates vary with the hazards.

Private fine arts collections, on the contrary, have many characteristics in common, and the rates, rules, and coverage are prescribed by the inland marine rating bureaus.

Private collections of fine arts are defined by the rating bureau rules to include the property owned by individuals, firms, corporations, and associations that are not (1) dealers, or auction rooms and not (2) museums, art galleries, or art institutions ordinarily open to the public. The rules further specify that privately owned property in the custody of a dealer or museum assured may not be considered a private collection when insured in the name of the dealer or museum for the account of whom it may concern. Further explanations provide that property of hotels and schools or colleges shall be considered private collections, even though the school or college property may be insured in the name of a state or other political subdivision. Property of Federal, state, county, or municipal authorities other than school property may not be considered private collections.

Coverage for private fine arts collections. The basic coverage is similar to that afforded jewelry and furs, and protects "against all risks of loss of or damage to such property except as hereinafter excluded." There are only three paragraphs of exclusions. The war damage exclusion is the same as that appearing on other inland marine policies.

A second exclusion reads, "Wear and tear, gradual deterioration, moths, vermin, inherent vice or damage sustained due to and resulting from any repairing, restoration or retouching process." The words "repairing, restoration or retouching process" differ from the comparable wording in other inland marine policies, because they are designed to fit the type of work that may be done on fine arts. Age results in deterioration in many works of art, and it is customary among collectors to have experts retouch and repair the ravages of time. Underwriters believe that workmen should be responsible for the results of their work, and any damage resulting from such repairs is not considered an insurable hazard.

The third exclusion paragraph refers to "breakage of statuary, marbles, glassware, bric-a-brac, porcelains, and similar fragile articles, unless caused by fire, lightning, aircraft, theft and/or attempted theft, cyclone, tornado, windstorm, earthquake, flood, explosion, malicious damage or collision, derailment or overturn of conveyance, unless indorsed hereon."

The intent of this paragraph is to exclude loss from the ordinary dropping and breaking of fragile articles. It is the belief of underwriters that owners of such property should take special precautions to prevent breakage. There is provision, however, for endorsing the policy to cover ordinary breakage when the assured is willing to pay the extra charge and the underwriter feels that the circumstances are such that the company can extend the coverage.

The exclusion discussed in the preceding paragraph lists damage by aircraft as one of the perils for which breakage would be covered. This is a different wording from that used in many policies, which refer to "damage by falling aircraft and objects falling therefrom." The difference in wording might be important if the assured's property were located near an airport. The vibration from a low-flying aircraft might be sufficient to shake small articles from a shelf. Such an occurrence might be construed as "aircraft damage" and as such would be covered by the fine arts policy, but it could not be considered damage by a falling aircraft unless the plane actually crashed.

There have been occasions when blasting in the neighborhood has caused sufficient vibration to upset fragile articles and to result in breakage. There can be no doubt that a blast is an explosion. The problem is to make certain that the particular damage for which any claim is made did result from the blast and not from vibration from some other cause not covered by the policy.

Each location where the property customarily is situated must be specified in the policy. Permission is given for the property to be moved for exhibition or other purposes, and the coverage continues while the property is in transit and at the temporary location. It is understood and agreed, however, that the assured will give notice to the insurance company within seventy-two hours from the time the property leaves the specified location if more than ten per cent of the value is moved. It is important that the insurance company know whenever the property is moved, and the clause provides that the premium for the policy shall be adjusted according to the extra hazard involved in the transportation and the exhibition.

When two or more locations are specified in the policy, transit coverage is granted between the specified locations without any additional premium and also without requiring notice to the company when such transportation is to take place. If there is occasion

to move more than ten per cent of the value elsewhere than between the specified locations, the usual seventy-two hours' notice must be given to the insurance company, and an additional premium may be charged.

The property of some policyholders is moved at such frequent intervals that they cannot specify any location. The frequency of the moves is such that it would be burdensome to report each move within seventy-two hours. A full floater coverage may be written for such assureds. The floater privilege may be given for movement within a city, within a state, or anywhere within the continental United States and Canada.

All the endorsements relating to location or to floater coverage contain an exclusion relating to the premises of fairgrounds or to the premises of any national or international exposition unless specific permission is given for such exhibition.

There are two reasons for this exclusion. The first is that there is a severe fire and conflagration hazard at many fairgrounds and exposition grounds. The insurance company feels that it cannot afford to be exposed to the extra fire hazard unless it has an opportunity to check the location and to collect an extra premium when it is warranted. The second reason for the exclusion is that such an exposition might have a concentration of insured works of art. It might happen that a dozen or more of the assureds who carry their insurance in the same company would send property to the same fair or exposition. The insurance company must have an opportunity to check the location of any possible accumulation of property to make sure it is not exposed to a greater amount of possible loss than its reinsurance will permit.

Schedule requirements. It is required that fine arts be scheduled. When the schedule of items is not long and does not change frequently, it is customary to put the schedule on the policy in much the same way that fur coats and jewelry are scheduled on jewelry-fur policies.

Many art collectors have extensive lists that change as they have an opportunity to improve their collections. It is permissible to provide that the coverage shall apply to items listed on a schedule that is on file at a specified office of the insurance company, or according to a schedule on file at some other designated place if the schedule has been examined and signed by a representative of the insurance company.

Blanket items are permitted up to ten per cent of the amount of the policy, and a 100 per cent coinsurance clause is attached to apply to the blanket item. Under special conditions, the Inland Marine Insurance Bureau will permit blanket items in excess of the usual ten per cent limit.

It is important that the listing be made in some detail. If the piece is a painting, the list should give the title, the artist, and other information that would make correct identification easy. The color, size, type, age, and such other designation as there may be for porcelains and glassware should be described. Similar pieces must be distinguished so that there can be no doubt regarding identity of the damaged or destroyed pieces in case of loss.

Valued policy provisions. It is customary to issue fine arts policies on a valued basis. The insurance company agrees to the value of each item on the schedule, and in case of loss the amount listed is paid. This is reasonable because often it is difficult to determine the value of a work of art after it has been destroyed or damaged. The situation is entirely different from that in connection with ordinary merchandise or household goods. Ordinary goods have been purchased within a sufficiently recent period that their market value can be determined by checking the value of like merchandise. In the case of a 500-year-old painting, it is necessary to check in advance whether it is an old master or merely an old painting.

It is important that the underwriter have clear evidence of the value of the property covered by a fine arts policy. The cost price of a piece may be taken as good evidence of its value if it was bought in the open market. Many fine arts purchases are made privately, however, and it is possible that the assured has paid more than the piece is worth. On the other hand, there are occasions when pieces are acquired at forced sales, and the real value may be in excess of the cost price. Many underwriters establish contact with reliable art appraisers who advise them on the values of insured property. In case of doubt, an appraisal may be required.

There may be occasions when the underwriter does not feel that a valued policy should be issued. It is permissible to include an actual cash value clause. A policy containing an actual cash value clause should also include provision for appraisal after a loss, with wording similar to that used in other inland marine policies written on an actual cash value basis. This method of insuring fine arts

would be satisfactory if the items could be compared with other property having an established market value. It would be of doubtful desirability when the property is unlike other property in the open market and when the value is dependent upon some peculiar characteristic of the piece itself.

Special conditions. The fine arts policy contains a "pairs and sets" clause that differs somewhat from that of the jewelry policy. The jewelry "pairs and sets" clause limits recovery for a partial loss to a proportionate part of the insured value, without reference to any special value the article may have as part of such pair or set. The fine arts "pairs and sets" clause is broader and provides that "in the event of loss of or damage to any article or articles which are a part of a set, the measure of loss of or damage to such article or articles shall be a reasonable and fair proportion of the total value of the set, giving consideration to the importance of said article or articles; but in no event shall such loss or damage be construed to mean total loss of set." This clause recognizes that the value of a work of art may depend largely upon the fact that a set is complete. This is considered to be more likely in connection with fine arts than with ordinary jewelry, the missing part of which may be replaceable.

It is permissible to add a clause reading:

> In the event of the total loss of any article or articles which are a part of a set, this company agrees to pay the assured the full amount of the value of such set as specified in the schedule attached, and the assured agrees to surrender the remaining article or articles of the set to this company.

There is an added charge of twenty-five per cent of the rate on the items concerned for the attachment of this clause. The use of this clause may eliminate a great deal of trouble in the adjustment of a claim. There could exist a great difference of opinion regarding the relative value of different parts of a set. The difference in rate is intended to cover whatever loss there might be to the company in following this procedure.

Newly acquired property is covered automatically. The clause granting this extension provides for the insertion of a percentage figure limiting the amount of such automatic extension to a proportion of the original policy amount. The assured is required to report the new acquisitions within ninety days from the date acquired and pays a pro-rata additional premium from the date

acquired. The policy ceases to cover such newly acquired items if they are not reported within the ninety-day period.

A warranty that does not appear in other inland marine policies reads, "It is warranted by the assured that the property insured hereunder shall be packed and unpacked by competent packers." The packing of fine arts property is extremely important and cannot be trusted to ordinary movers. It is necessary that many fine arts objects be packed in moisture-resistant coverings. A nail carelessly driven can ruin a canvas. The collector who makes a specialty of some particular type of art work is likely to know the dangers of improper packing and will see that only the best-qualified packers are used. This may not be the case with persons who have only a few pieces that have been bought at random or inherited.

Other clauses in the fine arts policy are similar in their wording and intent to those appearing in other inland marine policies. The commonly used clauses are:

No benefit to carrier or bailee.
Requirement to report loss and file proof of loss.
Provision for examination of records and examination of assured under oath.
Payment of claim within sixty days after acceptance of proof of loss.
Excess clause referring to other similar or identical insurance.
Provision that the company shall pay no more than the amount set opposite each item, which is agreed to be the value.
"Sue and labor" clause.
Fraud and misrepresentation clause.
Suit clause.
Cancellation clause.

Rates. Most fine arts remain at a fixed location during the policy term. The rating rules recognize this fact, and the first set of rates applies to collections that are expected to remain at the location named in the policy. The basic rate is the fire contents rate promulgated by the fire insurance rating bureau having jurisdiction. Because it is intended that fine arts shall be insured for their full value, the 100 per cent coinsurance rates apply if such rates are published. The rules make provision for special rating when the property is kept in vaults and when the fire rating bureau has not published any vault contents rate.

Loadings are added to the base (fire) rate in order to secure the total rate. Loadings in territory with municipal fire protection (as defined by the fire insurance rating bureau having jurisdiction)

are twelve cents per $100 of value for the first $10,000 of value, graduate down to one-half cent per $100 of value for the portion between $500,000 and $800,000, and are one cent per $100 of value for the entire amount when the policy amount exceeds $800,000. The loadings for locations outside recognized public fire protection are fifty per cent higher.

These loadings do not contemplate extensive or frequent windstorm exposure. Policies covering property located in states bordering on the Gulf of Mexico exclude the hazard of windstorm unless additional rates are charged.

Floater coverage up to ten per cent of the policy amount is granted without any extra charge. Floater coverage up to fifty per cent of the policy amount may be granted at extra rates based upon the proportion of the property covered under the floater provision. The charges are graduated according to whether the floater privilege extends to a city, a state, or the continental United States and Canada. The first $5,000 of floater coverage above ten per cent of the policy amount costs seventy-five cents per $100 of value for floater privilege in the entire United States and Canada, and this graduates downward to five cents for the portion in excess of $75,000 if the floater privilege extends only throughout a single city.

If the floater privilege is extended to more than fifty per cent of the policy amount, the full floater rates (as described in the next paragraph) are applied to the value of the property to which the floater privilege is extended. That portion of the policy amount to which the floater privilege is not granted is rated in accordance with the location rates.

Full floater coverage is given at flat rates that vary according to whether the property is to circulate within a city, a state, or the entire United States and Canada. A 100 per cent floater policy limiting coverage to a single city may be written at a total rate of one per cent of the policy amount. A statewide floater is written at one and one-fourth per cent of the amount of the policy, and a floater for the entire continental United States and Canada costs one and one-half per cent of the policy amount.

If a comparison is made between the fine arts policy rates and the rates for extended coverage, it will be seen that a fine arts policy may be written in some locations for less than the cost of fire and extended coverage. This is most likely in the case of large policies

when the loading above the fire rate for the fine arts policy may be as low as one cent per $100.

At first glance this seems to be improper because the fine arts policy gives much broader coverage than a fire and extended coverage policy. It must be remembered, however, that most household furniture fire and extended coverage policies are written for a small fraction of the total value of the assured's property. The fine arts policy is intended to be written for the full value of the property. The experience on fine arts policies has shown that the rates are adequate when full insurance to value is required. Another factor that justifies a low rate, as compared to the usual extended coverage rate, is the fact that fine arts usually are given better care and protection than ordinary household furniture. In case of any threat of loss, the assured is most likely to save his prized possessions first.

If the assured desires breakage coverage, the exclusion relating to breakage may be deleted for an additional charge. This additional rate ranges from thirty-seven and one-half cents per $100 of value for amounts under $5,000 down to five cents for the amount in excess of $75,000. These additional rates are applied to the value of the pieces to which the breakage coverage is extended.

The minimum premiums are $10 for one-year and $25 for three-year policies. A policy issued for a period of not more than ninety days must carry a minimum premium of $5.00. Trip transit policies have a minimum premium of $2.00. There are no rates for trip transit policies, nor are there any filed rates for the additional charges to be made when insured property is sent on special trips. These charges are subject to company judgment, depending upon the hazards involved and the length of the trips. A trip may be covered either under a trip transit policy or by issuing a short-term floater policy. It is up to the underwriter to determine which would give the assured the better protection and the company an adequate premium.

The rules of the Inland Marine Insurance Bureau provide for special rates and rules for policies covering in excess of $100,000 if the Bureau feels that the circumstances justify special treatment. Many privately owned fine arts collections are housed and protected in a manner equal to that of the finest museums. The flat rates appearing in the manual must be based upon the conditions surrounding the average collections of fine arts and do not do

justice to collections that have special protection. Such collections are relatively few in number, and it is not feasible to develop special rating schedules to cover them.

Fine Arts Dealers

Insurance policies for dealers in fine arts usually provide similar coverage to that in policies for private collections. The dealer's stock is changing constantly, and it is not feasible to list each piece on the insurance policy or in a schedule filed with the insurance company. The dealer needs a policy that insures all the works of art in his possession.

It has been pointed out that one of the principal reasons for individual scheduling of fine arts in private collections is the difficulty of determining their value after the works of art have been destroyed. This situation does not exist to the same extent in connection with dealers' property. Dealers usually keep complete records of cost on all articles, and such detailed inventories enable them to prove losses to the satisfaction of insurance companies. A dealer is expected to be an expert in his knowledge of fine arts, and the amounts paid for his stock should represent reasonable values.

There are two ways in which fine arts dealers' coverage may be written. A blanket form is satisfactory if the dealer's stock is constant and without any important fluctuations in value throughout the year. The form covers antiques and works of art of every description owned by the assured. It also covers property of others held on consignment or in trust, and sold but not removed, as well as any other property which the assured holds and for which he would be liable in case of loss. It is similar to the jewelers' block policy in that it gives an extremely broad coverage, including the property of others that may be in the custody of the assured for sale, repair, or other purposes. It is customary in the fine arts business for dealers to hold property on joint account (similar to a consignment arrangement), and such property also is covered by the policy. The exact wording is prepared in accordance with the needs and the business practices of the assured and varies in different policies.

The blanket policy almost always contains a 100 per cent coinsurance clause. The dealer must be certain that his insurance is adequate to cover his values if any loss is to be paid in full. If there is little transit hazard, the policy may cover at the business location of the assured without any outside coverage.

Most fine arts dealers deliver property to their customers, and they may do an extensive business outside their home cities. The policy can provide transit coverage in addition to the location coverage. This usually is so arranged that the dealer periodically reports all his shipments to the insurance company. The transit coverage is written along the lines already discussed for annual transit policies. The transit coverage, for which there is an additional premium, may be different from the location coverage.

For dealers whose values fluctuate widely, the blanket policy is not satisfactory and a reporting form of policy is used. They are required to report their total values, usually at the end of each month. The reporting form contains a clause which provides that in the event the values reported are less than the actual values, any loss shall be adjusted in the proportion that the last reported values bear to the actual values. Thus, if a dealer reported only seventy-five per cent of his values (by mistake or in an effort to save on his premium costs), he would collect only seventy-five per cent of any loss which occurred. This is the so-called "honesty" clause, which appears in almost all reporting form policies written by fire and marine insurance companies.

Transit coverage may be included in a reporting form policy. As a part of his monthly reports, the dealer is required to report all the property shipped, its value, and the points to which it was shipped. The underwriting and rating of the transit risk is similar to that for any annual transit policy.

Exclusions and special conditions. Dealers' fine arts policies contain a few special clauses not found in policies covering private collections. Three of them are exclusions.

The first of these is an exclusion of any fixtures or equipment used by the assured in the conduct of his business. The broad coverage of the fine arts policy is not extended to such furniture and fixtures.

The second exclusion relates to any losses resulting from the infidelity of employees of the assured or of persons to whom the insured property is entrusted. The underwriters feel that the assured should use special diligence to check the honesty of his employees and persons to whom he entrusts fine arts property. It would encourage carelessness to insure the infidelity hazard, and in addition the coverage would overlap that of a fidelity bond.

The third exclusion applies to property that disappears mys-

teriously or to a loss revealed by the taking of an inventory. Inventory shortages are most likely to result from infidelity of employees or carelessness on the part of the assured in handling or watching his property. Underwriters consider such losses uninsurable in the field of fine arts, because to insure them would be to encourage carelessness.

Inasmuch as the values of the pieces are not agreed upon in advance (as they are in the private fine arts policy), it is necessary to include some provision for establishing the value in case of loss. The value may be set at the cost to the assured, or it may be the replacement cost of items that have an established value in the open market. It is necessary for the assured to keep detailed records, and the policy usually requires that the assured's books be open to inspection by the insurance company both before and after a loss. If the assured's books are destroyed in a catastrophe, he will find it difficult to collect in case of loss, because he must prove his value and loss under a dealer's fine arts policy.

Policies may contain an excess clause which provides that the coverage of the fine arts policy shall be excess above any other insurance applying to the loss. As pointed out above, it is customary to include a 100 per cent coinsurance or other clause which provides that the insurance company will be liable for no greater proportion of any loss than the amount of insurance under the policy bears to the total value. This coinsurance clause seems to give the insurance company adequate protection without the excess insurance clause, and the presence of both clauses in the policy might complicate the settling of a loss if there were other insurance.

Rates. The rating of dealers' fine arts policies follows the same principles used in making rates for policies covering private collections except that there is no regulation of rates for dealers' policies. The companies determine the rates in relation to the hazards of the individual property. The hazards at the fixed location are principally fire, lightning, theft and burglary, windstorm, and explosion. The rates for these hazards are taken into account, and a loading is added to take care of the miscellaneous hazards covered by the policy. The 100 per cent coinsurance rates are used because the policy contemplates full insurance to value. The transit hazards are evaluated and an adequate loading is added if transit coverage is provided.

It is customary for a dealer's fine arts policy to show two rates,

one for the location coverage, which applies to the amounts reported each month at the fixed location, and a second for the transit coverage to be applied to the values shipped each month.

Museums

In many respects the museum is a large private fine arts collection. Works of art are acquired for permanent display, and there is little more trading or selling of property than there is in connection with a private collection. Many large museums do not insure their permanent collections. They have superior protection in their fire-resistive buildings and in their guard systems, and they feel that the expense of complete insurance would not be warranted.

It is customary for museums to lend property to each other, and most museums carry insurance on the property of others in their custody. Where the lending is constant, the museum may have a reporting form policy on property acquired temporarily for exhibition purposes. The coverage is effective from the time the property leaves the premises of the owner, while it is on exhibition in the borrowing museum, and until it is returned safely to the owner. These policies are similar to the reporting form policies issued to dealers, and they must provide some method of arriving at the value of the property in case of loss. There is no standard form; each policy is written to fit the needs of the museum.

Rates are based upon the principles already discussed for private and dealer collections. In the case of borrowed and exhibition property, it is necessary to evaluate the proportion of location and the proportion of transit hazard. When the exhibitions are of short duration, the chief hazard may be that of transportation. Museums employ people who are experts in the handling and packing of fine arts, and it can be anticipated that proper care will be given the property.

Underwriting of Fine Arts Collections

Fine arts collections range from those of the wealthy collector whose property is equivalent to a museum to the person who has two or three good pictures or antiques that have been handed down as heirlooms. The integrity of the assured is an important point to consider, as is the case in underwriting any of the extremely broad inland marine policies.

The first step in underwriting is to investigate the assured's

background and the origin of the property upon which he is requesting insurance. Credit reports are an excellent source of general information. Another subject to be investigated is the financial standing of the assured and the possibility of his being forced to liquidate some of his valuables in the event of financial reverses. A true art lover hates to let go of his choice pieces. It is possible that financial difficulties might force a person to secure money from the sale of his art collection. There might be a temptation to fake a loss so that he could get the money without actually letting go of his treasures.

The number of frauds in the fine arts business is small, considering the millions of pieces insured, but there are enough that the art collector and his insurer must not overlook the possibility. There have been some clever imitations of the paintings of the great masters. Many of these were made many years ago and actually are almost as old as the works of the masters they imitate. Only an expert can tell the difference, and in some cases there have been differences of opinion among the experts concerning who was the painter. These frauds are usually unintentional as far as the dealer and the present owner are concerned. The chance of loss to the insurance company as a result of such a fraud lies in the possibility that the owner may discover the fraud and attempt to recover his investment from the insurance company by causing the destruction of the spurious work.

Occasionally a dealer or collector commits an active fraud by trying to sell an imitation. In many cases the consequences are not serious, if the owner believes he has a genuine work of art and has no inclination to destroy it. There is a legitimate business in the manufacture of "antiques," and many of the manufacturers are absolutely honest in making and marketing their products as imitations. It is not so certain that they will continue to be labelled as imitations once the articles reach trade channels. It is important for the purchaser of antiques to depend upon the opinion of an expert unless he has an opportunity to check upon the history of the piece. Underwriters try to determine the methods by which the assured acquires his property and whether he is careful in checking authenticity.

The determination of value is an important part of the underwriting. The ultimate test is the market value of the property when this test can be applied. For example, the Currier and Ives prints marketed so extensively during the middle of the last cen-

tury have acquired a value far beyond their original sales prices. Many of them are in existence, and they have a well-established market value that can be determined and accepted as the value for insurance purposes.

The problem of valuation is much more difficult when each work of an artist is the only one of its kind. It is necessary for the appraiser to consider the general excellence of the artist's work and the individual merit of the painting in question. The only way for an underwriter to determine this with any degree of accuracy is to secure an appraisal by an expert in the particular field of art concerned. The assured may be required to present such an appraisal in connection with any important schedule of art works.

Real difficulties arise in connection with works of lesser-known and particularly of contemporary artists. It is difficult for the experts to agree which artists will become famous as the years go by. There are fads in art, and it may be that a "modern" painting of strange design will sell at a high price today under the pressure of the fad and that its value may decrease sharply in future years. Collections consisting largely of modern works should be reappraised every few years to bring the values into line with current conditions. Changes in economic conditions affect the value of collections. During periods of depression the values are lower because people do not have so much money to invest in their hobbies.

A catastrophe hazard may be present in connection with both large private collections and dealer and museum property. Institutions such as universities may borrow collections of art works for special exhibits. For example, a midwestern university borrowed a collection of valuable paintings in 1948 for a special exhibit. The total value of these paintings exceeded a million dollars. They were insured in the name of the lending museum, and the university paid the premium for the thirty days of the exhibit and the transit coverage to and from New York.

The exclusion of coverage at fairgrounds and expositions is put in the policy because the fire hazard at such locations usually is severe. The exclusion may be waived, but the insurance company must have an opportunity to examine any such location before it is committed to liability on it. Large exhibits such as that at the New York World's Fair in 1939 and 1940 involved liabilities of many millions of dollars, and special precautions were taken to

protect the priceless works of art from fire and theft. These exhibits present a reinsurance problem, which will be discussed in Chapter XX.

The breakage hazard is severe with certain types of statuary and with porcelains. Objects with protruding arms and other extensions are easily damaged. Porcelain, or chinaware, is a fine grade of ware and is superior in translucence, whiteness, and hardness to ordinary pottery. It gives a clearer, more ringing sound than pottery and is much more fragile. Ordinary pottery is made from clays that make it heavier than porcelain and capable of standing a more severe blow or drop. Care must be exercised in granting the extension of breakage coverage to porcelains. Breakage coverage can be granted safely only when the property is set in well-protected display cases. Much glassware is similar to porcelain in its fragility and is underwritten in a similar manner.

Special burglary protection, the presence or absence of fire protection, and stability of the building in which the property is located are all factors to be taken into account in underwriting a fine arts collection.

Questions

1. What qualities determine whether a piece of property may be insured under a fine arts policy?
2. Why is it considered proper to insure fine arts under an inland marine policy even if the property remains at one location throughout the policy term?
3. Compare the coverage under a fine arts policy with that provided under personal jewelry and fur policies.
4. Why is the "pairs and sets" clause of the fine arts policy different from the similar clause of the jewelry policy?
5. What justification is there for the fact that the broad coverage of the fine arts policy may at times be provided at a lower premium than the more restricted coverage of a fire and extended coverage policy?
6. Why is it considered feasible to issue a fine arts policy providing blanket coverage on a dealer's stock, whereas each article must be scheduled on a policy covering a private collection?
7. What are the principal differences in coverage between a fine arts policy on a dealer's stock and one covering a private collection?
8. In what respects do the needs of a museum for fine arts insurance coverage differ from the needs of a private collector?
9. Discuss the important facts to be considered in underwriting a fine arts policy.

CHAPTER XVIII

Miscellaneous Personal Coverages

THERE HAS BEEN A REVOLUTION in the personal activities of people in the United States during the present century. Fifty years ago personal activities were centered almost entirely about the home. Today, the thirty-five- to forty-hour work weeks prevalent in offices and industry give people time for recreation of many kinds. Rare indeed is the man or woman who does not own some equipment for use in his or her hobby. The values of guns, cameras, golf clubs, and other hobby equipment may be many hundreds of dollars.

Inland marine underwriters insure the property of the hobbyist and have developed insurance policies that cover the property anywhere in the world and protect it from a multitude of hazards. Best known of the hobby coverages are the inland marine policies on cameras, stamp collections, musical instruments, and various types of sporting equipment. The inland marine underwriter can arrange to cover almost any type of hobby or vacation equipment the owner may wish to have insured.

The widespread sale of the personal property floater has limited to some extent the demand for individual policies covering hobby equipment, for it is possible to schedule this equipment on such a floater. There is an active demand, however, for individual policies from people who do not wish to purchase "all risks" insurance on all their belongings.

Occasionally the property owner may pick out the items he believes are most subject to loss and insure only them. For example, a camera hobbyist may insure only the cameras, light meter, and carrying cases he takes with him and not the enlarger, printer, and developing equipment he leaves at home in a protected location. This may result in the company's receiving an inadequate premium for the exposure, because the rates contemplate that all hobby property will be insured, including that which is subject to a smaller degree of hazard.

There have been proposals that "master" insurance policies be

issued to manufacturers or dealers under which they could issue certificate policies to purchasers of hobby equipment. The Joint Committee on Interpretation and Complaint has held that such an arrangement is not permissible under the "Nation-Wide Definition." Some policies of that nature have been issued in states that have not adopted the "Nation-Wide Definition," but the practice violates one of the cardinal principles of good inland marine underwriting. An arrangement whereby a certificate of insurance can be issued to anyone who purchases equipment does not give the insurance company an opportunity to investigate the desirability of the assured.

Camera Floater

Cameras used for private and commercial purposes are considered together because of their similarity. The rules, rates, and forms for camera insurance have been standardized and are promulgated by the inland marine rating bureaus. The rating bureau filings are applicable to:

1. Cameras, projection machines, and articles of equipment pertaining thereto.
2. Movable sound equipment pertaining to the recording, projection, reproduction, and operation of motion pictures.

An explanatory note in the rules provides that miscellaneous property such as films, binoculars, telescopes, microscopes, and similar property used in connection with cameras or photographic equipment may be insured under a camera floater subject to the camera forms, rules, and rates.

The rules, rates, and forms promulgated by the rating bureaus are not applicable to:

1. Television cameras and equipment.
2. Coin- or token-operated devices.
3. Property of dealers or manufacturers.

The property just listed may be insured under a camera policy when it meets the requirements of the "Nation-Wide Definition" or other applicable regulation, but the forms and rates are not prescribed. The companies may use whatever forms and rates the underwriters believe are justified by the hazards to which the property is subject.

The coverage under the camera floater is "all risks of loss of or damage to the described property" except as otherwise provided. The coverage is provided in a short form to be attached to the scheduled property floater policy. This basic policy contains the many clauses covered in Chapter IV.

There are four exclusions in the form, two of which are similar to those found in the jewelry and fur policies. The wear and tear exclusion clause applies to "wear and tear, gradual deterioration, moths, vermin, inherent vice or damage sustained due to any process or while being actually worked upon and resulting therefrom." The war damage exclusion is the same as that appearing in the other personal policies.

The two other exclusions are designed to fit particular conditions affecting camera insurance. The first of these excludes "loss of or damage to any camera or equipment designed for aerial photography, while in or on any aircraft, unless endorsed hereon." This does not exclude coverage on ordinary cameras while on aircraft; neither does it exclude coverage on aerial photographic equipment while it is on the ground. It may be eliminated for the payment of an extra premium. The reason for this exclusion is the extra hazard involved in the frequent use of such equipment in aircraft and the possibility that it might accidentally be dropped from a plane.

The fourth exclusion, also specially designed to fit insurance on photographic equipment, excludes loss or damage resulting from the "infidelity of persons to whom the insured property may be loaned or rented." Photographic equipment frequently is loaned and rented, and the rates for camera insurance are not adequate to cover infidelity losses.

The rating bureau rules require that all items be scheduled individually and that either an amount of insurance be set opposite each item or an agreed value be made to apply to each.

It is permissible to include a blanket item not exceeding ten per cent of the total policy amount. This blanket item is intended to cover small articles such as sunshades, filters, and other small articles that would make the schedule unnecessarily long. It is required that a 100 per cent coinsurance clause be made to apply to these miscellaneous items. The intent of the rules is that the major items shall be scheduled and that they shall include at least ninety per cent of the total value. The ten per cent miscellaneous

item is intended to cover the few small articles with low individual value.

The Inland Marine Insurance Bureau rules provide that the Bureau may authorize a larger miscellaneous item than ten per cent on specifically submitted and approved cases. Such authorization might be given when there is an unusually large proportion of small items and it is considered impracticable to schedule them all.

Property of others that may be in the control or custody of the assured may be scheduled and covered under the policy.

Rates. The rates are uniform over the entire country. The principal chances of loss have proved to be those outside the premises of the assured, regardless of the location. There does not seem to be much difference in the habits of camera owners in different parts of the country; losses occur from about the same causes wherever the camera may be. Camera owners take many pictures while traveling on vacations. The assured who is a resident of New York, for example, may have a loss while traveling in Utah or Arizona.

The rates are slightly higher than the rates on personal jewelry, and about twice the rates on personal furs. The rules of the Inland Marine Insurance Bureau provide that special conditions, charges, and credits be made to apply to policies covering in an amount larger than $50,000 when the circumstances justify special treatment.

The exclusion of losses from infidelity of persons to whom the property is loaned or rented may be deleted for an additional charge of forty cents per $100 on commercial risks and for an additional charge of twenty cents per $100 on other than commercial risks.

Minimum premiums are $5.00 for one year and $12.50 for three years.

Underwriting camera policies. The losses under camera policies are much the same as those under other policies of the "all risks" type. Many losses are from theft. There are others from mysterious disappearance, forgetfulness, and accidental dropping of equipment. There is an occasional fire loss at the premises of the assured. The underwriting of a noncommercial policyholder is largely a matter of ascertaining that the person is careful with his property and that he can afford his hobby. An investigation of a policyholder's income may be advisable when the amount of the

policy or frequent additions to it indicate that large sums of money are being spent on new equipment.

The underwriting of a commercial camera policy takes into account the hazard at the location of the property. The rates for camera policies are high enough to provide for the fire and burglary hazards in a residence. This may not be the case with a commercial policy. Many photographic studios are in mercantile buildings that have a fire rate as high as the entire camera rate. In such cases the assured would get the "all risks" protection of the camera policy for little or nothing above the fire rate. When the amount of the policy is in excess of $50,000, there is the possibility of securing special rating to take care of an excessive fire or burglary hazard, but there is no provision for other than the standard rate when the amount of the policy is less than $50,000. The underwriter may decline to write the policy if the hazards are excessive for the rate.

Commercial photographers who are covering news events may encounter such unusual hazards as riot and civil commotion. In some instances newsmen have had their cameras smashed while taking pictures of picket lines and labor disturbances, and there is the possibility of unintentional damage by unruly crowds at athletic contests and other assemblies. The nature of a commercial photographer's work should be ascertained to make certain no unusual hazards not contemplated by the rate are involved.

Expensive equipment used to photograph animals may be subject to special hazards. The assured may be careful, but the use of cameras in remote locations and in the forests and jungles involves chances of loss that may be beyond these contemplated by the standard rates. Expeditions frequently find it necessary to travel by small boats or native canoes in their journeys through uninhabited territory, and there may be a total loss of equipment in case of accident.

Films and negatives may be insured under the camera policy. The amateur or professional who uses motion picture equipment may have a large investment in films. The policy should indicate the value of such films clearly. There may be a question whether the value is the cost of unexposed film of the same type or includes the cost of taking the pictures. In the case of amateur films, it is best to specify that the value is that of unexposed film or to specify an agreed value for each film. A large proportion of amateur pictures are taken at or near home, where the expense of taking the

picture is little or nothing, or on vacation trips, to which the picturetaking is incidental. A policyholder might feel that he is entitled to recover the entire cost of a vacation trip if his films of the trip are lost unless the policy is entirely clear on this point.

The commercial photographer may have a real reason for wanting coverage to include the expenses of taking the pictures. Such a situation would be similar to that of a motion picture studio described in Chapter XII. If such coverage is desired, the same underwriting practices should be followed as those outlined for motion picture risks. The value of the property can be agreed upon in advance whenever it appears that difficulty would be encountered in establishing the value after a loss. The assured should be encouraged to have duplicates made of films that would be expensive to replace. There may be occasions when the underwriter will decline to insure expensive films that would be impossible to replace, unless the assured does have duplicates made.

Camera equipment not covered by bureau rules. Television cameras and equipment are not regulated by the rules of the inland marine rating bureaus. Underwriters feel that the conditions under which television cameras are used vary so greatly that manual rating is not justified. Portable television cameras may be transported in several parts because of their weight. Values may be many thousands of dollars. Rates depend upon the amount of transportation involved and would be higher for a unit that is moved frequently to cover spot news events than for heavier cameras, such as might be set up in a football stadium for a period of several weeks in the fall of the year. The rating of a policy for television cameras that remain for extended periods of time at fixed locations would take into account the fire and extended coverage rates for these locations.

Token- or coin-operated devices are not regulated by the rating bureau rules. The most common form of coin-operated camera equipment is that set up in railroad stations and other public places in which people may take their own pictures. The hazard to such equipment is much the same as that to any coin-operated vending machine. The rating and underwriting of these machines should be handled the same as in the case of any other coin-operated device, and this has been discussed in Chapter XII.

The inland marine rating bureau rules do not cover property of dealers or manufacturers. It is contrary to the provisions of the

"Nation-Wide Definition" to issue an inland marine policy covering articles for sport or recreation when such property is on sale or in the course of manufacture. It is necessary that the property be in the custody or control of parties who intend to use it for the purpose for which it was manufactured. Thus, a dealer or manufacturer could secure a camera floater to cover property he intends to use for photographic purposes but not property he intends to sell. For example, he could insure experimental camera equipment that he is testing but will not sell.

Policies covering dealers' or manufacturers' camera equipment are specially rated and underwritten because of the peculiar problems involved. The values are likely to be high on special equipment, and the susceptibility to damage may be entirely different from that of standard equipment. Underwriters secure full information regarding the property and its damageability. Rates are based upon established rates for known hazards plus a judgment factor to cover hazards upon which there has been little or no experience.

Stamp Collection Floater

Millions of people collect stamps, and the stamps owned by a collector may be worth many thousands of dollars. There is probably no other hobby, except perhaps the collection of gems, in connection with which the values of the collection are represented by such small and delicate objects. It is characteristic of stamp collectors to be extremely proud of their collections and to take excellent care to prevent loss or damage. If this were not the case, it would be impossible to insure such fragile articles without sustaining frequent and expensive losses.

Postage stamps are collected in greater numbers than any other type, but there are many collectors of revenue stamps and other types of stamps issued by governmental authorities for tax or other purposes. Collectors may specialize in stamped envelopes, in blocks of stamps, in the stamps of one country, or in covers. A "cover" is an envelope with a stamp on it that has been cancelled by the Post Office in the mailing process.

Many collectors make a specialty of "first-day covers." These are envelopes bearing stamps of a particular issue and have been mailed on the first day that the particular stamp is issued by the Post Office. Frequently the Post Office or some civic body at the

point of first-day issue will put a special notation on all envelopes mailed at the place and on the day of issue. This is known as a "cachet," and envelopes bearing such notations are much in demand by collectors of covers.

During recent years the United States Post Office Department has encouraged the collection of stamps and of first-day covers by issuing a large number of commemorative stamps. These are issued first at a place or places related to the event commemorated. On the following day the stamps are placed on sale at all other Post Offices throughout the country. The postmark on the first-day cover identifies the date on which it was sent.

Insurance for private stamp collections. Insurance coverage for private stamp collections is regulated by the inland marine rating bureaus. The property that may be insured by a stamp collection policy is described as:

> Postage stamps including due, envelope, official, revenue, including match and medicine stamps, covers, locals, reprints, essays, proofs and other philatelic property owned by the assured, including the books, pages and/or mountings therefor.

This description is sufficiently broad to include any property that may be associated with stamp collecting. For example, many people have collections of Christmas seals. These are not postage stamps, but they are used extensively on letters and have come to be associated with stamps of other kinds. A collection of Christmas seals could be insured as philatelic property.

The scheduled property floater policy is used as the basic policy, and the coverage is provided by a form attached to it. The form insures against "all risks of loss of or damage to" the described property except as otherwise provided. It is required that the property be listed and described in a schedule on the policy unless the schedule is bulky. Bulky schedules may be kept on file with the insurance company or at some other designated place after examination by a representative of the insurance company. It is not intended that each individual stamp be listed and described. The general practice is to describe the stamps by groups or classes, with an amount assigned to each group or class, and to list specifically only the more valuable stamps.

The rules do not include provision for automatic coverage on new acquisitions. It is intended that the description in the policy shall be sufficiently broad to cover ordinary acquisitions of the col-

lector in his efforts to complete the various sections of his albums and that he will report immediately any highly valuable acquisitions. The inland marine rating bureau rules do not prohibit the insertion in the policy of an automatic coverage for new acquisitions. Such a clause can be added when a company feels that the particular circumstances of the policyholder justify such cover-

Exclusions in the stamp collection form. As in all the "all risks" policies, the actual coverage under the stamp collection floater form is set out by the exclusions.

The first exclusion is a variation of the wear and tear clause. It excludes loss or damage resulting from "fading, creasing, tearing, thinning, transfer of colors, wear, tear, inherent defect, dampness, extremes of temperature, moths, vermin, gradual depreciation and deterioration, or damage sustained from handling or while being actually worked upon and resulting therefrom." The rules do not provide for any modification of this exclusion. It is felt that all the perils and changes listed in this exclusion are uninsurable because they are the result of either the inherent nature of stamps or carelessness on the part of the assured.

Loss resulting from the infidelity of persons to whom the insured property is entrusted is excluded. This exclusion may be deleted for the payment of an extra premium and a minimum additional premium. The fact that the exclusion may be deleted only by special endorsement not only gives the company an extra premium to compensate for the added hazard but also gives the underwriter an opportunity to inquire into the reason for wanting infidelity coverage.

Mysterious disappearance losses might be frequent and troublesome if there were no restrictions on this coverage. Stamps are so small that they are easily lost in the leaves of books or thrown away in trash. The form excludes coverage for mysterious disappearance of individual stamps unless specifically scheduled or, if not specifically scheduled, unless mounted in a volume and the page to which they are attached is also lost. Any stamp of high value should be scheduled specifically with an amount set opposite it. Under these circumstances the mysterious disappearance of the stamp would be covered. It also is considered proper to give mysterious disappearance coverage for an entire sheet of an album.

The intent of the exclusion is to avoid loss for stamps that are

carelessly mislaid or thrown away. The assured probably would be more careful with a valuable stamp and would not be so likely to lose it in trash or by throwing it away accidentally. The loss of an entire sheet from an album is unlikely unless someone stole it. Mysterious disappearance that really is a theft loss is intended to be covered.

Coverage during transportation by a common carrier is limited to Railway Express, armored car, registered mail, or insured parcel post by an exclusion reading, "Loss or damage to property in the custody of transportation companies unless such shipments are made by Railway Express or armored car; nor shipments by mail unless by registered mail, or insured parcel post." It is believed that property of a value similar to that of money and jewels should be given the protection of the safest form of transportation if it is to be insured.

The form also excludes loss by "theft from any unattended automobile unless in the custody of Railway Express, armored car companies or while being shipped by registered mail or insured parcel post." This exclusion may be deleted for the payment of an additional premium. This exclusion differs from those used in other inland marine forms in that it excludes loss from any unattended automobile and does not limit the exclusion to those that are not locked. The deletion of the exclusion gives full unattended automobile coverage and does not limit the coverage to locked automobiles. Because stamps and their albums usually are small in size and can be carried conveniently, there is little reason for the collector to leave his albums in an automobile. A request for deletion of this exclusion may indicate that the stamps are carried about frequently and that there is a considerable transit hazard.

There is a war damage exclusion similar to that appearing in other inland marine policies covering personal property.

Valuation of lost or damaged stamps. The form includes special provisions for the determination of value in case of loss. The valuation section is divided into four parts, the first of which reads as follows:

> In case of loss of or damage to property scheduled herein and representing individual items, this company shall pay or make good to the assured such loss or damage up to but not exceeding the amounts set opposite the items involved.

The basic policy to which the form is attached contains an actual cash value clause. The valuation clause quoted here provides for

payment up to the amounts set opposite the items involved but does not specify that the amounts are the agreed values of the items. Ordinarily the insurance company would pay the amount scheduled for the loss of any individual item when the item is scheduled on the policy or in a list referred to in the policy.

The valuation clause also provides that the company "shall pay or make good" the items involved. This is intended to give the company the privilege of replacing lost or damaged articles. It is a desirable privilege because the company sometimes can make replacement more advantageously than the assured can. Usually an assured would be pleased by this type of settlement because it would re-establish his collection in the same condition it was in before the loss.

The second part of the valuation section also refers to scheduled items, but instead of mentioning individual items it refers to scheduled pairs, strips, blocks, series, sheets, or the like. Many times a block or other group of stamps is worth considerably more as a unit than the total value of all individual items would amount to separately. This is particularly true when the block of stamps is from the margin of the sheet and contains the plate number that appears on all sheets of stamps issued by the United States. For example, a typical stamp about ten years old with a face value of three cents may be worth eight cents. However, a block of four stamps from the margin with the plate number attached may be worth fifty-five cents.

The valuation clause pertaining to such groups that are scheduled reads as follows:

In case of loss of or damage to property specifically described in the above schedule as pairs, strips, blocks, series, sheets or the like, this company shall pay in the event of total loss of such an item up to but not exceeding the amount set opposite the item involved and in the event of partial loss not more than the cash market value of the whole set, less the cash market value of the remainder at the time of loss, it being however understood and agreed that in the event of the property being insured for less than the cash market value, the liability of this company shall not exceed the proportion that the amount insured bears to the cash market value.

In case of total loss of a set, the settlement under the clause just quoted is to be made in the same way as provided in the preceding clause, and payment is to be up to but not exceeding the amount scheduled.

In case of partial loss, the amount payable is to be the difference

between the cash market value of the entire set and the cash market value of the portion remaining. The effect is similar to that of the "pairs and sets" clause of the fine arts policy, which provides that "the measure of loss of or damage to such article or articles shall be a reasonable and fair proportion of the total value of the set, giving consideration to the importance of said article or articles." Both clauses recognize that the value of the set may be greater than the total values of the individual parts.

The final phrase of the clause is intended to encourage the assured to carry insurance equal to the value of such sets. If such sets are underinsured, the insurance company will pay only a part of any partial loss, the amount to be paid being in the proportion that the amount of insurance bears to the cash market value.

The third part of the valuation section limits recovery on non-scheduled items to the actual cash market value at the time of loss less depreciation. It also provides that the company shall not be liable on unscheduled property for more than $250 on any one stamp or any one pair, strip, block, series, sheet, cover, or the like.

The final part of the valuation section is a full coinsurance clause applying to unscheduled property, which provides that the company "shall not be liable for a greater proportion of any loss on property not specifically scheduled herein, than the total sum insured on such unscheduled property bears to the actual cash market value thereof at the time such loss shall happen."

A policy that is written properly to protect the assured's collection shows a schedule of all philatelic property worth more than $250 per stamp or set and includes a blanket item for the smaller units in an amount sufficient to cover the full market value.

Permissible extensions of coverage. The standard territorial limits are the continental United States and Canada. These limits may be extended for an additional premium. Many philatelists are interested in collecting foreign stamps and desire world-wide coverage in order to sell, trade, and purchase stamps from collectors all over the world. This foreign trade exposes the property to greater hazard than when the coverage is limited to the United States and Canada. The higher premium is necessary to compensate for the hazard.

It is permissible to include coverage on the property of others while such property is in the custody or control of the assured. The endorsement provided for this purpose contemplates the ex-

tension of the policy to cover a specific amount on the property of others. It also states that the company shall not be liable for a greater proportion of any loss on such property than the amount of insurance on such property bears to the total value of such property in the custody and control of the assured at the time of loss. Many collectors receive stamps on approval from other collectors or dealers so that they may examine them prior to purchase. A collector who is receiving stamps on approval needs to insure such property to provide reimbursement for their value in case they are lost or damaged while in his custody or control. The additional premium for this extension of coverage is based upon the amount of such coverage granted and is charged at the rate that would apply if the policy were increased in that amount.

Rates. The rates for the extremely broad coverage of the stamp collection floater are lower than the rates for comparable coverage on other personal property. They are less than the rates for fur insurance and less than half the rates for jewelry and camera coverage.

A credit of ten per cent of the premium may be allowed if the policy contains an agreement by the assured to keep at least seventy-five per cent of the insured property in a fireproof safe or vault with combination lock when not in use or on exhibition.

Minimum premiums are $5.00 for thirty days or less, $10 for annual policies, and $25 for three-year policies.

Commercial property—special exhibitions and societies. The rules, rates, and forms for private stamp collections do not apply to dealers and auctioneers or to special exhibitions held under the auspices of and insured in the names of stamp societies or organizations.

There is one type of stamp dealer who maintains a store at street level and caters to the general public. His stock is likely to consist of lower-valued stamps, and he may deal largely in packets of stamps. He is likely to carry a stock of coins, souvenirs, and general merchandise as well. This type of store has many customers coming in and out, and the broad coverage of the stamp collection floater may result in many losses to the insurance company.

Another type of stamp dealer sells from an office on the upper floors of an office building, or perhaps from his home, and caters to a restricted clientele. He is more likely to maintain a careful in-

ventory of his stock and may be a satisfactory prospect for a dealers' stamp policy similar in coverage to that issued to private collectors. Policies for dealers are written according to the needs of each dealer. The underwriting and preparation of these policies are similar to the handling of fine arts dealers' insurance. The integrity of the assured is extremely important.

Auctioneers need coverage for short periods of time during which the stamps are in their custody for sale. Policies for auctioneers are written on an individual basis and in amounts to cover the particular collections being sold.

Underwriting of stamp collections. The best stamp collection policyholders are those serious stamp collectors who maintain complete records of their collections. In addition to the schedules attached to their policies, they maintain records of the stamps included in any miscellaneous items. Without such complete records, the adjustment of losses is extremely difficult.

Collectors trade and sell stamps, and it is questionable how much trading and selling by a collector would make him a dealer. It is difficult to draw a fine line between the hobbyist and dealer, but ordinarily the hobbyist is interested primarily in improving his collection rather than in trading for profit.

Coin Collections

Collections of coins may be insured under forms and at rates similar to those used for stamp collections. The stamp collection policy may be amended to fit a coin collection. The description of the property insured should be changed to fit coins, or coins and paper money if the collection also includes such currency. The description should be broad enough to include commemorative coins, private gold coins of the sort issued by private companies where there was no government currency available, tokens issued by merchants when currency was scarce, tax tokens issued by states for use in payment of sales taxes, and paper currency of all kinds issued by existing and former governments.

The underwriting of coin collections follows the same principle as the underwriting of stamp collections. The persons who collect such property are likely to take extremely good care of it, and usually they are willing to provide a complete catalogue of their permanent items. It is desirable to have a catalogue at some other place than where the collection itself is if the property is not sched-

uled in detail on the policy. Coins are not so easily destroyed by fire as stamps, but the value of coins depends largely upon their condition. Smoke might tarnish them so that their value would be reduced considerably. Collections of modern United States coins and currency may be subject to greater pilferage hazard than stamps because the money can be spent.

Sporting Equipment Floaters

An inland marine policy can be written to cover almost any kind of movable equipment. The terms "general property floater" or "scheduled property floater" are used to describe policies prepared to fit particular needs of a policyholder or the needs of a small class of policyholders.

Golfing equipment, guns, and fishing tackle are examples of the types of property people frequently desire to insure. Occasionally there are requests for insurance on contact lenses, dentures, ship models, trophies, rare books and manuscripts (which also may be insured as fine arts), portable radio and television equipment, mobile telephone equipment, and collections of odd sorts, such as dolls, matchbook covers, pitchers, and hotel soap wrappers.

Inland marine insurance for these miscellaneous types of property is not regulated, but the coverages and rates fall into patterns. The following discussion of the coverages generally written will indicate the pattern followed in each class.

Golfers' equipment. The golfers' equipment floater usually covers golf clothing, clubs, balls, and bags. The intent is to insure the type of property the golfer would be likely to carry with him to the golf course and to leave at the clubhouse. The coverage usually is against certain specified perils such as fire, lightning, windstorm, flood, theft, and the collision or overturning of vehicles in which the property is being transported. It is not customary for insurance companies to provide an "all risks" coverage on a golfers' equipment policy, but there is nothing to prevent a company's doing so if the underwriter feels that the assured is a careful person and the rate is sufficient to compensate for the hazard.

The rate for a specified perils policy is likely to be about two per cent of the policy amount, but it may be considerably higher, depending upon the fire insurance rate at the clubhouse where the property ordinarily is situated. It is intended that the amount of

coverage be equal to the value, and many companies include a 100 per cent coinsurance clause.

The exclusions are similar to those in other inland marine policies covering personal property. A wear and tear exclusion is used frequently, and there is likely to be an exclusion of loss due to breakage unless the breakage is caused by one of the perils specifically insured against. Theft of golf balls is excluded unless an entire golf bag is stolen. Also excluded is infidelity of the assured's employees, but it is provided specifically that caddies are not to be considered as employees of the assured. An assured is expected to exercise care in the hiring of employees and should be responsible for any loss caused by their infidelity, but he seldom has an opportunity to exercise such caution in the hiring of caddies.

Clothing loss is limited in most policies to a nominal amount, such as $50 or $100.

There usually is a war damage exclusion.

Policies that cover in the domicile of the assured must schedule items individually, with a description and the amount of insurance on each, in order to comply with the "Nation-Wide Definition." Golfers' equipment may be insured on a blanket basis, but such a policy should exclude the premises of the assured. When the assured owns an expensive set of matched golf clubs, it is desirable to have them scheduled for specific amounts so that there will not be any dispute over value in case of loss.

Guns. Many sportsmen own and use expensive guns for hunting or trapshooting. Guns and equipment used with them are insurable, and the policy usually issued is of the "all risks" type. Rates are likely to be less than for comparable golf equipment because the guns are not subject to the same breakage hazards. An owner of an expensive gun usually gives it the greatest of care. Unless the gun is stored in a building with a high fire rate, the rate for "all risks" coverage may be as low as one per cent of the value. It is customary to schedule all guns and valuable accessories at their full value on the policy, and any miscellaneous item should be limited to ten per cent of the policy amount.

Exclusions in the gun floater policy are few, and are limited to a war damage exclusion, an infidelity exclusion, sometimes an exclusion of loss due to strikes, riots, and civil commotions, and a special exclusion designed to exclude loss due to improper care of the guns. The exclusion of strike and riot damage is needed because

persons taking part in riots or labor disturbances might steal the gun for use in the riot or the assured might become involved in the riot and use the gun for defensive or offensive purposes. This use is not considered to be insurable at the low rates charged to cover guns used for sport.

The wear and tear exclusion is specially designed for the gun floater. It excludes loss or damage caused by explosion, rust, fouling, marring, scratching, wear, tear, gradual depreciation, or loss caused by or during any process of repairing, refinishing, or renovation. Proper care of a gun will prevent loss from the causes specified in this exclusion.

The most desirable prospects for this coverage are collectors and those sportsmen who are interested in trapshooting and skeet. The hunter who takes his gun into the woods exposes it to more hazards than does the trapshooter and skeet enthusiast.

Miscellaneous equipment floaters. Other sporting and personal equipment, such as archery and tennis equipment, for example, may be insured according to the needs of the owner and the hazards to the property. The loss experience has been better on policies that schedule each item individually than on those that provide blanket coverage. Apparently there are two reasons for this difference in experience. The first is that individual scheduling results in the policy's being written for almost the full value of the property. A blanket policy is likely to be for less than the full value, and in this case the insurance company does not receive a premium commensurate with the hazard. Secondly, scheduled articles are likely to be property the assured prizes highly.

Musical Instruments Floater

Musical instruments insurance is grouped with the hobby coverages because the greatest use of musical instruments probably is for personal amusement purposes. The professional and semiprofessional playing of musical instruments will be considered along with amateur use, because the hazards are similar and there is much overlapping of amateur and professional playing.

Musical instruments are comparable in value and damageability to cameras and fine arts. The owner of an expensive instrument needs protection against damage from all the numerous hazards that can ruin the instrument. Most musicians carry their instruments with them to take lessons and to play in concerts, and there

is a need for insurance that covers the property while it is in transit as well as when it is located at the owner's residence.

The inland marine insurance policies developed to cover musical instruments are similar to those used to insure cameras and fine arts. There are two forms. One is an "all risks" form giving an extremely broad protection, and the other is a restricted form that insures against certain specified perils. This restricted form is used mostly to insure less expensive instruments of the type used by school children or others who do not have a large investment to protect.

Broad form coverage. The property that may be covered under a musical instruments floater includes musical instruments and articles of equipment pertaining thereto. Auxiliary equipment may be covered, and the rules of the inland marine rating bureaus provide that sheet music also may be covered. Instrument cases, reeds, strings, music stands, special lights, and amplifying equipment may be insured if they are used in connection with the musical instruments. Property of others in the custody or control of the assured is covered.

It is intended that all articles be scheduled on the policy and that an amount of insurance or an agreed valuation be shown for each article. It is permissible under rating bureau rules to include a blanket item aggregating not more than ten per cent of the total amount insured on scheduled items. It is required that a 100 per cent coinsurance clause apply to the blanket item. The rules of the Inland Marine Insurance Bureau provide for permission to increase the blanket item to more than ten per cent if the facts are submitted to the Bureau and the circumstances justify a higher percentage.

The usual territorial limits are the continental limits of the United States and Canada. These may be extended by endorsement.

There are only four exclusions in the broad form musical instruments floater. There is a war damage exclusion similar to those appearing in other personal inland marine policies, and there is an exclusion of loss or damage resulting from the infidelity of persons to whom the property is rented or loaned.

The third exclusion relates to loss or damage caused by:

(a) Any process of refinishing, renovation, or repairing;

(b) Dampness of the atmosphere and/or extremes of temperature;

(c) Moths, vermin, wear and tear, gradual deterioration, inherent vice, or breakage of strings.

This is a special version of the wear and tear exclusion fitted to the conditions that affect musical instruments. Proper care on the part of the assured will avoid most of these excluded wear and tear losses.

The fourth exclusion in the musical instruments floater form relates to professional musicians. The clause reads:

Unless otherwise endorsed hereon this policy shall become void if during the term of this policy the assured is engaged in playing for remuneration any musical instrument insured hereunder.

A professional musician is defined in the rating bureau rules as "a person who receives any remuneration for playing a musical instrument insured during the term of the policy." This definition ties in the insured instrument with the playing for remuneration. The assured might be a professional musician in the popular sense of the term, but this would not affect the coverage of the policy so long as he did not play for remuneration any instrument insured under the policy. On the other hand, the coverage is not intended to be effective on any instrument played by the assured for remuneration during the policy term.

The exclusion concerning instruments played for remuneration is deleted from policies covering bands, orchestras, chamber music ensembles and similar groups, and property of boards of education or municipalities, and from policies covering individuals when the policies are written at the rates applicable to professionals.

Classification of musical instrument owners. The owners of musical instruments are divided into several groups for underwriting and rating purposes. Individual owners are classed separately from groups, such as bands and orchestras. The individual owners are then divided between nonprofessionals and professionals, and the groups are divided between dance bands and other bands or orchestras.

There is no definition of dance bands. There are no policy provisions relating to dance bands, and it is a matter of underwriting whether a band shall be classified as a dance band or not. Usually there is little difficulty, because dance bands engage in that form of playing on a regular basis.

The bureau manuals do include a definition of orchestras and bands in order to assist the underwriters in making a distinction between individual policyholders and such groups. An orchestra, band, or similar group is "construed to be any formally organized group of musicians who perform as a musical unit before the public at regular or frequent intervals." Thus, a group that rehearses for a year in order to give an annual concert would come within the definition because of its "regular" performance each year. So also would a group that performs frequently but on an irregular basis. A further explanation of the rule states that it is not permissible to rate as a single group any combination of individuals, or combination of bands or orchestras, because they are members of or controlled by booking agents, unions, associations, sales organizations, professional music schools, or similar arrangements.

A special provision in the rules makes it permissible to insure the privately owned instruments of bona fide members in the same policy as the instruments of the organization itself.

Rates for musical instruments. The rates for insurance on instruments of individual nonprofessional musicians are roughly equivalent to the rates for individual jewelry policies. The rates for individually owned professional instruments are almost twice as high as those of nonprofessional musicians for policy amounts of less than $1,500, but are the same for amounts exceeding $1,500. Apparently it is the belief of underwriters that the professional musician who owns a valuable instrument is likely to take as good care of it as the amateur musician. Instruments of bands, orchestras, chamber music ensembles, and bands of schools, boards of education, and municipalities take rates about the same as those for individual nonprofessional musicians when the policy amount does not exceed $500, but the rates for larger policies covering the instruments of these bands are higher than the rates for individually owned instruments.

Dance bands and orchestras pay the highest rates because of the circumstances under which such organizations must work. There are large numbers of people circulating about a dance hall or ballroom, and they have access to the orchestra stage even during intermissions when the orchestra may be away from their instruments. The situation is entirely different from that at a symphony concert where the orchestra plays on a stage removed from the audience. Dance bands and orchestras play before the public much more frequently than other types of musical ensembles. The dance band is

likely to have several engagements a week, whereas another band or orchestra will rehearse many times to present a few public performances.

Usually it is to the advantage of a musician to have his instrument insured with the other instruments of the group. When the value of his instruments does not exceed $500, the individual may pay at the rate of about $1.80 per $100 of value if he is a nonprofessional or $3.00 if he is a professional. The group rates are less than these amounts, and the individual would get the advantage of the average rate paid by the group. It is only in the case of a small dance band that the individual rates are lower than the group rates. The lower rates for groups of instruments are justified by the savings in expense in writing policies. It is a much simpler job to write a single policy on a hundred instruments than to write a hundred policies. It will be noted that when high values are to be insured, the lowest rate obtainable is on the property of an individual musician. The saving to the individual by insuring under the group policy is possible only when the value of the individual's instruments is low and the aggregate value of the group's instruments is high.

The rating rules provide that the infidelity clause in the form may be deleted for an additional premium of ten per cent of the policy premium. Annual minimum premiums are $15 for policies covering dance bands and individual professionals, and $10 for nonprofessional individuals and bands other than dance bands. Three-year policies may be written at two and one-half times the annual rates and minimum premiums.

Coverage under the limited form musical instruments floater. The limited form of the musical instruments floater insures against loss or damage caused by fire, lightning, cyclone, tornado, flood, theft, and accident to conveyances. This is a much more limited coverage than is provided in the broad form. The most important differences are the lack of protection against losses due to mysterious disappearance, breakage of instruments, explosion, and theft from unattended vehicles. There is an exclusion that excludes any loss or damage to the property insured while it is left unattended in or on any automobile unless it is in the custody of a common carrier.

In addition to the unattended vehicle exclusion just described, there are only three other exclusions. A war damage exclusion is

used and also an exclusion relating to losses caused by the infidelity of persons to whom the property is rented or loaned. They are identical to the similar exclusions in the broad form. The exclusion relating to instruments played for remuneration is included under the same conditions as in the broad form.

Territorial limits are the same as in the broad form.

The rates for the limited form are ten per cent less than the rates for the broad form, but the minimum premiums are the same.

Underwriting of musical instruments policies. Many underwriters prefer to insure the individual musician who has a valuable instrument that he plays as a hobby. The value of the instrument plus the owner's interest in it as a hobby means that the instrument will be well cared for. Such an instrument is subjected to comparatively little outside exposure because the owner takes it out only to take lessons or to play in some amateur group.

Collectors of rare instruments have a deep interest in their property. If the fire hazard where the instruments are kept is satisfactory, such collectors are desirable policyholders. If the fire rate is higher than the musical instruments rate, it may be necessary to insure rare instruments under a fine arts form, because the rates for fine arts coverage are based upon the fire rate at the location where the property usually is kept. The musical instruments rate is based on the assumption that the property will be subject primarily to a transit hazard and will not be stored at a fixed location.

Underwriters are cautious in their acceptance of insurance on property of professional musicians and particularly in connection with instruments used by dance bands and orchestras. This type of playing may result in a considerably more frequent exposure to theft or breakage.

School bands are likely to show a good experience if the supervision and control of the band are strict. Many school band leaders insist upon the members' being present at rehearsals and require that a serious attempt be made to develop a worth-while organization. The members of such a group are forced to take their music seriously, and they will learn to handle their instruments carefully. A school band composed of happy-go-lucky participants who wander in and out of rehearsals at will is likely to have members who treat their instruments carelessly.

Coverage for dealers in musical instruments. The ordinary stock in trade of a merchant or dealer in musical instruments is not

eligible to be insured under an inland marine policy because there is no transit hazard. However, certain property of a dealer or merchant that is subject to a transit hazard may properly be insured under an inland marine policy. It would be in order to insure under an inland marine policy any musical instruments out on approval, or rented or loaned. Some dealers maintain a regular rental business in connection with their selling activities, and this property may be insured.

There is a great deal of installment sales of musical instruments, and dealers may wish to insure such instruments. The underwriter may feel that such property is more properly insured under an installment sales floater than under the broad musical instruments floater. The broad coverage can be written safely on installment sales property if the underwriter has an opportunity to investigate the individuals who hold the instruments and to decline to insure any instruments that are subject to an excessive hazard.

The bureau rules provide that it is not permissible for a company to issue to a dealer a policy under which he issues certificates of insurance to purchasers of instruments.

Some dealers collect rare instruments as a hobby. Such collections may be insured either as fine arts or as musical instruments, depending upon the rates and the hazards at the locations where the property is kept. Each instrument should be scheduled specifically with the value agreed to in advance, the same as in the case of any fine arts policy.

Questions

1. What are the exclusions in the camera floater form that are designed to fit the particular conditions of camera insurance?
2. Why are rates for camera insurance uniform throughout the country and not varied according to territory?
3. Why has it not been considered feasible to apply manual rates and rules to television cameras, coin-operated cameras, and property of photographic dealers and manufacturers?
4. Discuss the exclusions in the stamp collection form that are designed to fit the peculiarities of philatelic property.
5. Why does the stamp collection floater limit coverage during transportation by a common carrier to property shipped by Railway Express, armored car, registered mail, and insured parcel post?
6. Outline the provisions of the stamp collection floater relating to valuation in case of loss.

7. What extensions of coverage to the usual stamp collection floater are needed to protect the collector who receives stamps on approval?
8. Why are many underwriters unwilling to issue an "all risks" policy to cover golfers' equipment, but consider such a policy satisfactory on guns?
9. Why are the rates for instruments belonging to members of a dance band higher than the rates for musical instruments of other musicians?
10. Under what circumstances may the property of a musical instrument dealer be insured under an inland marine policy?

CHAPTER XIX

The Personal Property Floater

THE PERSONAL PROPERTY FLOATER is one of the newer inland marine forms, but it has become the most important from the standpoint of both premium income and the problems it presents. Many underwriters feel that the insurance companies are in about the same situation as a man who holds a bull by the tail: they are afraid to hang on because the experience is painful, and they are afraid to let go and drop such an important part of the business.

Few people will question the need of the public for broad insurance coverage on personal property. Chapter V on the general subject of "all risks" insurance has described in detail the multiplicity of hazards that threaten loss or damage to property in today's civilization.

Fire underwriters have attempted to meet the needs of the public by expanding the coverage of the fire insurance policy. It was customary to write windstorm policies, and in time it became permissible to add the windstorm coverage to the fire policy by an endorsement. The supplemental or extended coverage introduced in the 1920's was a further effort by the fire underwriters to provide a complete insurance protection. The fire policy with this endorsement included coverage against the specific hazards of fire, lightning, windstorm, hail, explosion, riot, smoke damage from improper operation of heating equipment, and damage by vehicles and aircraft. A few years later the fire underwriters further extended their coverage so that a loss on dwelling contents up to ten per cent of the policy amount would be covered if the loss occurred away from the premises named in the policy.

The policyholder benefited from all these extensions, but there remained many other hazards to property which had to be insured against under separate policies or for which no insurance could be purchased. Insurance against loss by burglary and theft could be purchased, but in most states it had to be in a policy separate from the fire insurance and was available only from a casualty insurance company. Water damage insurance to cover loss due to breakage

of plumbing fixtures was available, but the rates were high and not many people bought it.

If a householder wished to secure reasonably complete insurance protection for his property, he would have had to buy at least five policies, including a fire and extended coverage policy, a residence burglary and outside theft policy, a water damage policy, an earthquake policy, and a personal effects policy. In addition he might find it necessary to buy several other inland marine policies if he owned photographic materials, jewelry, fine arts, or furs. With all these policies purchased at considerable expense, the householder would still have to pay a loss out of his own pocket if it were caused by some unusual hazard not covered by any of his many policies.

Inland marine underwriters recognized the need for a broad insurance coverage that would protect the householder against loss from "all risks." They reasoned that such coverage was available on property in course of transit and on certain types of personal property such as furs and jewelry, so why should it not be available on all personal property?

The actual origin of the personal property floater is obscure. Several insurance companies are credited with (or blamed for, depending on the viewpoint of the reader) the origin of this form of coverage. It is believed that several companies wrote similar policies at about the same time. In some cases apparently this took the form of extending the personal effects policy to cover on the premises of the assured. In other cases, it seems that the underwriters prepared new forms to cover all the property of the assured wherever it might be.

Several names were used by the early writers of this form of coverage, and we find that the "Nation-Wide Definition," which was adopted in 1933, refers to it as the "personal property floater" and also as the "householder's comprehensive" policy. It had been written for several years prior to 1933 and was accorded the dubious recognition of being prohibited by the Definition. This prohibition was based on the principle that an inland marine policy should not provide coverage at a permanent location owned or controlled by the assured.

Popularity and Spread of the Personal Property Floater

The insurance companies had to stop writing the personal property floater in the states that adopted the "Nation-Wide Defi-

nition" without modification. The companies continued to write it in the states that did not adopt the Definition. The demand for a broad coverage policy was so great that many state insurance departments found themselves under pressure for modification of the Definition to permit the writing of the personal property floater.

Several midwestern states did modify the Definition within the first few years after its adoption. These western and midwestern states seemed less bound by tradition than the eastern states.

By the early 1940's, however, the whole country could enjoy the benefits of the personal property floater coverage except the northeastern states. It was inevitable that the policyholders of these states should wish the broad coverage of this policy, and by 1946 the "Nation-Wide Definition" had been suitably modified in every state.

It must be admitted that the personal property floater does go beyond the bounds of transit insurance because it covers property that does not move from a fixed location. Most of the property covered under the policy does not move from its fixed location from one year's end to the next. The determining factor in the popularity of the policy was the public's need, not for a transit coverage, which was available already in the personal effects floater, but for an "all risks" coverage. Fire underwriters were not able to provide the coverage under the laws of many states, and they were not sufficiently interested to seek amendments to the laws or regulations. Inland marine underwriters responded to the need of the public and asked the insurance departments to amend rulings so that the personal property floater could be written.

The personal property floater is no more illogical than is the bridge policy or the jewelers' block policy. Both of these policies cover at a fixed location owned or controlled by the assured, but they are recognized by the "Nation-Wide Definition." The ultimate measure of whether a policy can be written should be and usually is the needs of the public. In most states both fire and casualty insurance companies now can write the personal property floater. In view of the trend toward multiple line underwriting, there cannot be much quarrel with that situation. The public has been the winner, and the insurance companies also have gained by having a broader field in which to render service to their policyholders.

Basic Policy Conditions of the Personal Property Floater

The rules of the inland marine rating bureaus require that the conditions of the scheduled property floater policy be used as the basic conditions of the personal property floater. The wording of the scheduled property floater policy appears in Appendix C, and, in addition, the effect of the various clauses is discussed in Chapter IV, "The Inland Marine Policy Contract." The effects of these conditions, which are basic to many inland marine policies, are the same in the personal property floater as in the policies already discussed.

The personal property floater form is attached to the scheduled property floater policy to complete the policy. It is in this personal property floater form that are found the conditions to be discussed in this chapter.

Property covered. The first paragraph of the form sets out the property covered and reads:

> Personal property owned, used or worn by the person in whose name this policy is issued and members of the assured's family of the same household, while in all situations, except as hereinafter provided.

The words "personal property" are not defined in the form. In the absence of such a definition, it is necessary to depend upon legal definitions of personal property to find out just what type of property is covered. Unfortunately, this is not a simple problem. Two general types of property are recognized by the laws, real and personal. Real property, which is also known as "real estate" or "realty," consists of the land and objects attached to the land. There may be some question about just where the line is to be drawn in connection with certain types of property that may become part of the realty when attached to the land or attached to a structure that is attached to the land.

Personal property roughly is any property that is not real property. Personal property may be divided into three groups.

The first consists of movable objects not in any way connected with or attached to the land. Included in this group is such obviously personal property as clothing, jewelry, furniture, sports equipment, money, and all the many items that may be included in the term "household furnishings." There is no question about such property's being covered under the personal property floater.

Objects that have been attached to the land but have been re-

moved therefrom by a person who has the right to make such removal become personal property. Examples of such property are lumber, flowers, farm crops, and the products of mines. These objects remain a part of the real property as long as they are attached to the land. The owner of the land has the right to remove them and sell them as personal property.

A tenant has certain rights of removal, either by custom or by contract with the owner of the land. For example, if a farmer rents a farm for the purpose of operating it as a farm, there is the implication that any crops he raises are his to remove and sell. The person who rents a house and lot in the city may raise vegetables or flowers, and the owner does not question the tenant's right to remove and use the vegetables and flowers. On the other hand, the owner of the land might question the right of the tenant to remove a tree without his permission. Once the object has been removed by a person having the right to make the removal, the object ceases to be real property and is personal property.

A second type of personal property is the evidence of ownership or interest in property. Examples are stocks and bonds, notes, and other evidences of debt. The deed to a piece of land is personal property, although the land itself is real property.

A third type of personal property consists of objects that are attached to the land but that because of some special conditions retain their identity as personal property. A building that sits on leased land may remain personal property by agreement between the owner of the land and the owner of the building. A written lease making provision for the building's remaining the property of the tenant would establish the fact that the building is the personal property of the tenant. It is customary, for example, for persons who own summer homes or fishing lodges to lease ground and set their own buildings on the land, with a specific provision in the lease allowing the tenant to retain ownership of the building and giving him permission to remove the building at will.

The personal property floater does not contain any exclusion of loss or damage to "buildings." It is entirely possible when a building retains its identity as personal property that an insurance company would be obligated to pay for loss or damage to it under the personal property floater if the loss were not excluded by any other provision of the policy. Inland marine underwriters who are cautious put a special exclusion referring to buildings in any policy

covering the property of a person who is known to have a building on leased land. The personal property floater is not intended to cover buildings, and the practice of insurance companies is to protect themselves from the possibility of having to pay for the destruction of a summer home or other structure.

Fixtures also qualify as property that is attached to the land but that may retain its identity as personal property. Many problems arise in connection with fixtures under the personal property floater. There does not seem to be any clear-cut rule about when a fixture is personal property and when it becomes a part of the realty. A strict view would hold that anything attached to the land (or to a building that is itself attached to the land) would therefore become a part of the real estate. A more liberal view has held that objects that have been installed by a tenant and that can be removed without defacing the building are personal property.

Insurance companies have received claims under the personal property floater for damage to shrubbery that has been planted about a residence. The prevailing opinion seems to be that growing plants and trees are part of the real estate as long as they are attached to the ground and are not personal property.

There have been many claims involving objects a tenant has attached to the building. An example was a claim for damage to inlaid linoleum that had been cemented to the floor of a recreation room in the basement. The tenant did not have an agreement with the landlord that the linoleum remained his property and could be removed. In the absence of such an agreement, the linoleum was considered real property.

Understandings and customs of the neighborhood have much to do with the determination of what can be removed when a tenant leaves the premises. In some sections of the country, the window shades are provided by the landlord and are part of the real estate, whereas in other sections they are put in by the tenant and are removed when he leaves. The same thing is true of refrigerators, stoves, and floor coverings. The underwriter and adjuster may have to inquire into local customs before they can determine accurately whether such items may be considered real or personal property.

Although the personal property floater form does not contain any definition of "personal property," the rules of the inland marine

rating bureaus do include a paragraph that assists the companies to interpret questionable cases. This paragraph reads:

> The words "personal property" as used in the policy are intended to include fixtures and the like, installed by the assured in premises leased or occupied by the assured which premises are not owned by any person or persons whose property is covered under this policy.

This paragraph allows the companies to extend the coverage of the policy to fixtures installed by the assured in premises he is occupying but does not own.

It does not assist in the case of premises owned and occupied by the assured. There are claims presented by owner-occupants for damage to fixtures when the damage is not covered by other insurance policies. For example, few dwelling owners carry water damage insurance to cover their dwelling buildings. If a dwelling owner had a loss from a leaking roof or from rain blown in through an open window, it would be to his advantage to have as much of the building equipment considered personal property as the insurance company would allow under the personal property floater. The legal definitions of real and personal property might have to be relied upon to distinguish between the two and to draw a line where the personal property floater would cease to cover.

Persons whose property is covered. There has been some difficulty in interpreting the phrase referring to "members of the assured's family of the same household." The word "family" frequently is interpreted to imply a blood relationship, but the definitions of the word are many and varied. A synonym for "family" is the word "household," and under its meaning all the persons living under the same roof (including servants and boarders) could be considered members of the same family. Apparently it was the intent of the framers of the personal property floater to mean relationship by blood or by marriage, because the rules of the inland marine rating bureaus contain a provision that, "It shall not be permissible to issue a policy naming as the assured persons not related living together."

Many of the questions that have arisen in connection with the wording "family of the same household" have to do with children away at school, persons in military service, and married children who may not have an establishment of their own. It seems to be generally recognized by inland marine underwriters that children who are away at school but who intend to return to the family

establishment for vacations or when their studies are finished remain a part of the family of the same household.

There has been no unanimity of opinion regarding persons in military service. This was an acute problem during World War II and will continue to be vexatious as long as there is a large military establishment in this country.

Two recent decisions that seem to be on the point are in disagreement, although the one on a personal property floater ruled that the person was a member of the family of the same household.[1] Certain property of the assured's son, who was away from home in military service, was stolen from his quarters at camp. The son was nineteen years of age, and it was his apparent intention to return home and to school after his term of military service was over. The Supreme Court of Arkansas held that there had been no change in the domicile or residence of the son by his entering the Army, and they interpreted the word "household" to mean the same as domicile, residence, or place of abode. Therefore, it was held that the son was still a member of the assured's family of the same household.

An automobile liability case involving the words "a member of his [assured's] household" was decided in an opposite way by the Supreme Court of California.[2] The circumstances were somewhat different in that the son was married, although he and his wife were living with the assured before going into the service. The case involved an automobile owned by the son, which the assured was driving at the time of the accident. The assured had an automobile of his own, and he had purchased a liability insurance policy to cover it. The policy also protected the assured for his liability as a result of driving any other private automobile except an automobile owned in full or in part by "a member of his household." The court held that the son was not a member of the assured's household, stating, "We are rather inclined to believe that the term 'member of the household,' in view of the rules of law hereinbefore set forth, should be construed to refer to a person who at the time of the accident is actually dwelling under the same roof with the assured. . . ."

In this case the decision of the court was against the company,

[1] Central Mfrs. Mutual Ins. Co. v. Friedman, 209 S. W. (2d) 102 (Ark. 1948).

[2] Island v. Fireman's Fund Indemnity Co., 172 P. (2d) 520 (Cal. App. 1946), affd. 184 P. (2d) 153 (1947).

since there would have been no coverage under the policy if the son had been found to be a member of the assured's household. In the Arkansas case the decision also was against the company, inasmuch as there was coverage only if the son were held to be a member of the father's household. In view of the uncertainty concerning the exact meaning of the phrase "members of the assured's family of the same household," it appears possible that a court will decide any questionable case against the insurance company.

For practical purposes, the underwriter might apply a test involving the two following points:

1. Are the persons related? If so, this would make them eligible to be considered members of the same family. Relations by marriage could be considered as related.
2. Are they living under the same roof as a part of the same housekeeping unit? If they are living in the home for an indefinite period and are not merely casual visitors, this would seem to qualify them as members of the household.

It is not intended that servants, visitors, boarders, or persons who have established a home elsewhere be included.

Coverage for borrowed or rented property. The personal property covered by the policy is that which is "owned, used or worn" by the assured and his family. This extends the coverage beyond the property belonging to the assured and his family to any property they may use or wear. For example, if the assured or a member of his family borrows an expensive camera to take on a vacation trip and loses it, the loss is payable under the personal property floater.

An insurance company also may be liable, under a personal property floater, for damage to property belonging to a hotel in a room occupied by the assured, on the ground that the furnishings are used by the assured. Following the rash of hotel fires a few years ago, many hotels started to bill their patrons for damage done to furnishings as a result of fires in hotel rooms.

This problem may be serious in connection with an assured who rents a furnished apartment. The insurance company would be liable for any loss to the furnishings of the apartment, but the assured probably would purchase only enough insurance to cover the value of his own property. There would be an exposure to the insurance company far greater than would be contemplated by the

premium paid for the policy. An endorsement used by some insurance companies to eliminate coverage on property rented by the assured in a furnished apartment reads as follows:

In consideration of the amount of insurance for which this policy is written, it is hereby understood and agreed that this policy does not cover furniture, floor coverings, or other personal property rented to the assured, as part of the furnishings and equipment of any hotel room, furnished apartment or dwelling.

The phrase "except as hereinafter provided" eliminates from coverage such personal property as is excluded specifically later in the form.

Extensions of coverage to property of others. The coverage is extended by specific provisions in the form to certain other property in addition to personal property owned, used, or worn by the assured and his family. The assured may elect to have the coverage extended to the personal property of others while on the premises of his residences. Since this extension is made "at the sole option of the assured," other persons cannot make claim directly on the insurance company; the claim must be made through the assured and at his direction.

The assured has the option of extending the coverage to the personal property of others only when such property is "on the premises of the residences of the assured." There is no definition of "premises" in the form, and courts have held variously as to whether the premises extend beyond the building itself. Two Texas cases illustrate the opposite views that have been taken, depending upon the circumstances. Both involved suits on fire insurance policies. A part of one opinion reads: [3]

The word "premises" has been construed to mean the building, and does not prevent the insured from storing gasoline on his own lot outside of the building.

An opposite opinion contains the following: [4]

The term "premises" has attached to it various meanings, owing to the connection in which it is used but, generally speaking, the term includes not only buildings, but the lot or land upon which the same are situated.

The apparent intention of the framers of the personal property floater may be indicated by the fact that later in the form the words "residences of the assured" are used. This seems to indicate

[3] Fireman's Fund Ins. Co. v. Shearman, 50 S. W. 598, 599 (Tex. Civ. App. 1899).

[4] Merchants' & Mfgrs.' Lloyd's Ins. Exchange v. Southern Trading Co., 205 S. W. 352, 358 (Tex. Civ. App. 1918).

that "premises of the residences" is intended to be more inclusive than "residences." It is likely that a court would take a liberal view and would interpret "premises of the residences" to include the land surrounding the residence as well as the residence building itself.

It should be noted that the word "residences" is plural. Coverage can be extended to more than one residence of the assured. A loss occurring at a summer or other secondary residence could be covered as well as one occurring at the main residence.

The coverage also may be extended at the sole option of the assured to the "personal property of servants while they are actually engaged in the service of the assured and while in the physical custody of such servants outside such residences." (Personal property of servants on the premises of residences of the assured may be covered under the previously discussed clause, inasmuch as servants would be included in the category of "others.") This further extension applies to property of servants who are outside residences.

Questions arise as to what is meant by the words "actually engaged in the service of the assured." Would coverage be limited to times when the servant is going on an errand for the assured, or could a servant be considered as actually engaged in the service of the assured as long as he is in his employ? No judicial interpretation of this clause appears to have been made, and it is necessary to rely upon the apparent intent of the framers of the form. It appears that the intent was to allow coverage to a servant's property only while the servant is performing an act for and at the direction of the assured. Coverage does not seem to be intended when the servant is engaged in handling his own personal affairs.

Coverage may be extended to the property of a servant outside the residences of the assured only while the property is in the physical custody of the servant. The intent seems clear that there is to be no coverage if the property is in the hands of someone else at the time of the loss. For example, the coverage could not be extended to a camera belonging to a servant if at the time of the loss the camera had been loaned to a third person who was not a servant of the assured. Presumably if a loss occurred to property of one servant while in the hands of another servant who was engaged in the service of the assured, the loss could be covered if the assured so elected. The reference in the clause is to "servants" (plural); it specifies, not that the property must be in the custody

of the servant who owns it, but merely that it must be in the physical custody of "such servants."

It is permissible to restrict the policy so that it excludes property owned, used, or worn by any named person. This is an important permission when there may be a member of a family whose property the company does not wish to insure. The hazard in connection with the property of a particular person may be high, whereas the rest of the family may be perfectly satisfactory. For example, one member of the family may be away from home for long periods in a type of work that results in the loss of personal property at frequent intervals. The company can exclude this person's belongings without disturbing coverage on the property of other members of the family.

Extension of coverage to other than personal property. A further extension of the coverage to other than personal property of the assured is provided by the clause reading:

> The company will also pay the actual loss of or damage (except by fire) to property of the assured not specifically excluded by this policy caused by theft or attempt thereat.

The intent of this extension is to provide coverage for damage that may be done by thieves or burglars to residence buildings owned by the assured. It does clearly provide this coverage, and any damage done by burglars to the assured's residence would be covered. The reference to property "specifically excluded by this policy" is intended to avoid liability on the part of the insurance company for loss to vehicles, animals, business property, and other types of property excluded in the form. The coverage would apply to any building owned by the assured except one that might be considered as "pertaining to a business, profession or occupation" of the assured. (See discussion of exclusion of business property later in this chapter.) The coverage would apply to summer and other secondary residences as well as to the main residence. The theft of shrubbery, trees, or contents of a vegetable garden, for example, would be covered by this extension.

The personal property floater form of the Transportation Insurance Rating Bureau is slightly more restricted in this extension than the form of the Inland Marine Insurance Bureau. The T.I.R.B. form extends coverage only to residences owned and occupied by the assured. This extension would not cover theft of

shrubbery, trees, or garden contents, nor would it cover theft damage to buildings not owned and occupied by the assured for residence purposes.

Both the stock company form promulgated by the I.M.I.B. and the mutual company form of the T.I.R.B. extend coverage to the interior of the residences of the assured for any damage done by vandalism or malicious mischief. There is no limitation on the number of residences, nor is it specified that coverage is limited to residences occupied by the assured. Nothing would seem to prevent an assured from collecting from the company for a loss by vandalism to residences rented to other people. There is no reference in this clause to property specifically excluded. The exclusion of property pertaining to a business, profession, or occupation of the assured does not seem to apply to vandalism.

The concluding paragraph in this section of extensions provides that none of the extensions shall make the amount of insurance any greater than is specified on unscheduled personal property in the paragraph "Amounts of Insurance." That is, any amount that may be payable under these extensions is included in the amount of insurance allowed on unscheduled personal property and is not in addition thereto.

Limitations on Property Covered

The paragraph entitled "Amounts of Insurance" sets out the limitations on different groups of property. The first subparagraph places an amount of insurance on unscheduled personal property, and the second subparagraph places an amount on "personal jewelry, watches, furs, fine arts and other property as per schedules attached hereto."

This distinction between scheduled and unscheduled property is one of the basic principles of the personal property floater. The coverage on unscheduled property is intended to replace the many other policies the householder formerly had to buy in order to have complete insurance protection for his personal property. It is intended to insure his furniture, clothing, books, tableware, rugs, linens, and the other miscellaneous articles with which a house is furnished and which the assured and his family use.

The insurance on scheduled property is intended to cover the more valuable articles, such as those insurable under other inland marine policies.

Inland marine underwriters believe that it is not feasible to provide blanket insurance coverage without qualification on such valuable property as jewelry, watches, and furs. The principal danger of loss to these valuable articles is from theft. A burglar or robber seldom gets all the property of a person whose dwelling he enters or whom he holds up on the street.

A person who owns much jewelry wears only a portion of it at one time. If he could get a blanket insurance coverage, he might be willing to take a chance on a partial loss and buy insurance for only a portion of his total value. This would work out satisfactorily if everybody bought a policy in the same proportion to his total value, but this is not the case. The more valuables a man has, the less likely is he to have a total loss. Thus a man who owns $10,000 worth of jewelry might feel that he would need at least fifty per cent insurance to value in order to be taking a reasonable chance, whereas the man who owns $500,000 worth of jewelry might feel that a policy for $100,000 (twenty per cent of his value) would be all right for him.

Inland marine underwriters feel that the only equitable way to insure high value articles is to have them scheduled on the policy and to have each one insured specifically for its full value. Then there can be no discrimination in favor of the man who considers that his property is sufficiently well distributed that he can take a chance on partial insurance to value.

The scheduled portion of the personal property floater assembles into this policy all the individual coverages available to inland marine policyholders for their personal belongings. Jewelry, furs, fine arts, professional property, and stamp collections are insurable under the personal property floater under the same rates, rules, and conditions as if separate policies were issued, except that the individual minimum premiums do not apply. Other property may be scheduled if the rating bureau rules provide for individual scheduling of such property, but the rates and coverage will be those of the blanket portion of the policy.

Limitation on unscheduled jewelry, watches, and furs. In addition to the amounts of insurance on scheduled and unscheduled property, there is provision for fire and lightning coverage on unscheduled jewelry, watches, and furs. The reason for this becomes evident upon examination of the limitation appearing in the section of the form entitled "Limitations." This limitation reads:

As respects any one loss of unscheduled jewelry, watches and furs, the company shall not be liable for more than $250 unless the loss is covered under Item (c) Paragraph 3, in which event the company's liability for such loss is limited to the amount stated therein.

The $250 limitation on loss of unscheduled jewelry, watches, and furs has been in the personal property floater for many years. Underwriters feel that the $250 is sufficient to cover miscellaneous small items that might be lost, but that all items worth more than $250 should be scheduled.

Experience has indicated that many people have valuable articles that are kept in safes or vaults and are not considered subject to loss by theft or by the miscellaneous hazards covered by the personal property floater. Such property may be subject to loss by fire, since many people feel that no vault is really fireproof. There arose a demand for some method of providing fire insurance coverage on these miscellaneous items of jewelry, watches, and furs for which the assured does not want to pay the premium for individual scheduling but which are believed subject to loss by fire. In 1943, this provision was added by which the assured can secure fire and lightning coverage in any amount desired on unscheduled jewelry, watches, and furs for the payment of an additional premium.

There is a difference between the personal property floater promulgated by the Inland Marine Insurance Bureau (stock company form) and that promulgated by the Transportation Insurance Rating Bureau (mutual form). The mutual form contains the $250 limitation applying to jewelry, watches, and furs, but with this additional provision:

But with respect to such property of the assured and members of the assured's family of the same household this limitation shall not apply to loss or damage caused by fire, lightning, windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, smoke or damage by vehicles or aircraft.

It is the intention of the mutual form to give full fire and extended coverage on jewelry, watches, and furs, even though they are not scheduled.

Under the Inland Marine Insurance Bureau rules, the $250 limitation on loss of jewelry, watches, and furs may be modified for the payment of an additional premium. If an amount is inserted in the space following (c) of Paragraph 3 (Amounts of Insurance) and fire insurance in excess of the $250 is provided on unscheduled jewelry, watches, and furs, it is permissible to provide other cover-

ages in the same amount. Coverage against loss by windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, smoke, or damage by vehicle or aircraft may be added. The rate charged would be that promulgated by the fire rating bureau for "extended" or "supplemental" coverage.

Both rating bureaus provide for the addition of burglary and holdup coverage in any amount on unscheduled jewelry, watches, and furs beyond the $250 limitation, at an additional premium. Earthquake insurance also may be added to this coverage of unscheduled jewelry, watches, and furs.

These permissible modifications of the $250 limitation on losses of unscheduled jewelry, watches, and furs are intended to make the coverage of the personal property floater comparable to that provided by a fire and extended coverage policy and to the coverage of the residence theft policy. Without these modifications, the personal property floater is more restricted in its coverage on unscheduled jewelry, watches, and furs than are these other policies (except that the mutual policy provides full fire and extended coverage on these items).

Secondary residence limitation. Another limitation provides that the insurance company shall not be liable for more than ten per cent of the amount of coverage on unscheduled personal property ordinarily situated throughout the year at residences other than the principal residence of the assured. This is intended to limit the coverage at secondary residences, such as summer homes, where the hazard may be much higher than at the principal residence. The fire hazard at summer homes is likely to be high because frequently they are located in country districts where there is no fire protection, and the burglary hazard may be severe because of long periods of unoccupancy.

The limitation applies to property "ordinarily situated throughout the year" at the other residences. Property that the assured or his family may move out to the summer home temporarily for their stay is not subject to the limitation but is covered fully, even though it is lost while at the summer home.

The amount of coverage on property situated throughout the year at secondary residences may be increased by endorsement beyond the ten per cent. In such a case, the rate is adjusted according to the fire rate at the secondary location. An additional

charge or refund is made depending on whether the rate at the secondary location is higher or lower than at the main location.

Money and securities limitation. A third limitation on the property covered applies to money and securities. This subparagraph reads:

> As respects any one loss of money including numismatic property, the company shall not be liable for more than $100. As respects any one loss of notes, securities, stamps including philatelic property, accounts, bills, deeds, evidences of debt, letters of credit, passports, documents and railroad and other tickets, the company shall not be liable for more than

This limitation on money coverage may be extended to a total of $500 for the payment of an additional premium. The limitation on securities and similar documents may be extended to a total of $1,000 for the payment of an additional premium. These extensions of the limitations do not increase the amount of insurance on unscheduled property but merely extend the restriction as far as the specific type of property involved is concerned.

Some troublesome problems arise in connection with the coverage on money and securities. For example, a claim may be presented to a company by a policyholder who finds himself in possession of counterfeit money. His contention may be that he gave a good bill in payment and received worthless money in change. There do not appear to be any court decisions on this point, and it is necessary to follow the coverage of the policy to see whether the inadvertent acceptance of counterfeit money might be considered a covered loss.

"Money" means coins or currency. In order to recover for loss under the personal property floater, it would seem that the assured would have to prove that he was the owner of certain coins or currency that was lost. The fact that the assured turned the money over to another person for a consideration that was misrepresented would not seem to make it a loss under the policy terms. The policy does not guarantee that the assured will get full value for his money when he trades with others. It does not guarantee the solvency or veracity of the persons to whom the assured trades or sells insured items.

Another problem that may arise is the presentation of a claim for loss of funds due to forgery. It is true that a bank might have some responsibility in connection with forgery, but in case the bank

refused to accept liability, would the personal property floater cover the loss? There do not appear to be any court decisions to determine the coverage of the policy.

An examination of the situation may help to clarify the possible liability of the company. There is no specific money involved. The assured cannot point to a specific piece of property and say, "I lost that property." The policyholder's account is merely a credit on the books of the bank. It does not seem that such a loss could be sustained as a claim under the personal property floater.

There is the possibility that some court may hold that the acceptance of counterfeit money or the sustaining of a forgery loss is covered by the personal property floater. If this occurs, the coverage will then be established as something beyond the insurance of property. Should this occur, the insurance companies undoubtedly would want to revise the form to make it apply clearly to the loss of specific property and eliminate any possibility of claims for loss through incurring bad debts, accepting counterfeit money, or being victimized in trade.

A type of claim received by the companies under the securities coverage of the personal property floater is for loss of stock certificates. It is customary for corporations to replace lost stock certificates, but usually they require the owner to post a surety bond to cover any payments or any expenses the corporation might be responsible for if the lost certificates were found and presented by some one other than the policyholder who claims ownership.

For example, a policyholder lost a certificate for a stock that was worth $5,000 at the time of the loss. He had to post a surety bond that cost him $200. The company paid $200 on the ground that the actual loss to the policyholder was the cost of the surety bond. He had not lost $5,000, but he had lost a certificate that evidenced ownership of stock in the corporation. This certificate was a document within the meaning of the personal property floater. The loss of the certificate did not alter his ownership in the corporation, but the loss did prevent him from selling his interest. He was not in the same position as before the loss until a new certificate was issued, and the expense in connection with securing a new certificate was the cost of the surety bond. The same reasoning could be followed in connection with the loss of other documents. The actual measure of the loss is the cost of securing a replacement.

Coverage of the Personal Property Floater

Territorial limits. The short phrase "while in all situations," which appears near the end of the first paragraph in the form, provides world-wide coverage for the insured property. There are no territorial restrictions.

It is customary for the assured's address to be inserted in the policy, but this does not restrict the coverage to the location named. The only restriction in regard to location is that already discussed, which applies to property at a residence other than the principal residence of the assured. The address given in the policy is not declared to be the principal residence.

Perils insured against by the personal property floater. The perils insured against by the personal property floater are "all risks of loss of or damage to property covered except as hereinafter provided." For a general discussion of the term "all risks," see Chapter V. The actual coverage is determined by the limitations, the exclusions, and the amounts of insurance in the personal property floater form.

Exclusions. The exclusions in the personal property floater are extremely important, for they determine the actual coverage of the policy. These exclusions are grouped into seven paragraphs, but there are actually twelve exclusions.

The first exclusion provides that the policy does not insure "animals." There is no definition or explanation of the word, and occasionally there is some misunderstanding about what is meant. Policyholders are likely to feel that dogs, cats, and barnyard animals are "animals," but that fish, fowl, birds, and similar pets are not "animals" in the ordinary sense of the word. The insurance companies, however, usually follow the dictionary definition, which is to the effect that all members of the animal kingdom (as differentiated from plants) are animals. Under this interpretation, birds and fish are not considered to be covered.

In this respect, the personal property floater may be somewhat more restricted in its coverage than the usual household goods fire insurance policy. The fire policy does not exclude animals from coverage and presumably would cover the value of any animals lost because of one of the perils insured against. The framers of the personal property floater apparently felt that the coverage under this policy is so broad that any coverage on animals would result

in giving life insurance on them. The rates do not contemplate this hazard.

The second exclusion refers to:

Automobiles, motorcycles, aircraft, boats or other conveyances (except bicycles, tricycles, baby carriages, invalid chairs and similar conveniences), or their equipment or furnishings except when removed therefrom and actually on the premises of the assured.

Automobiles and other conveyances usually are insured under separate policies designed to fit their peculiarities. The exclusion in the personal property floater is necessary to prevent overlapping and conflicting insurance. The exception of bicycles "and similar conveniences" was added when the present form was promulgated in 1942 and was inserted to clarify the intent. There had been many questions whether such property was intended to be excluded as conveyances.

There have been some questions concerning motorscooters and motor-driven bicycles, which have been used in large numbers since the end of World War II. The dictionary definitions of "motorcycle" are broad enough to include any two-wheeled vehicle driven by a motor, and the motor vehicle laws of most states classify them as motorcycles.

Equipment and furnishings of conveyances are covered when they are removed from the conveyances and are on the premises of the assured. Since there is no limitation on the word "premises," this includes all premises of the assured, including his business premises, the premises at a summer residence, and any other location where the assured has a sufficient control that the location could be considered his premises.

Equipment and furnishings of conveyances do not have to be within a building to be covered, but merely on the premises. An outboard motor, for example, that had been detached from the boat and was resting on a pier owned by the assured could be considered on his premises.

It is permissible under the inland marine rating bureau rules to extend the personal property floater to cover boats not more than twenty-one feet in length (excluding inboard powerboats) and outboard motors for loss by fire, lightning, and theft to an amount not exceeding $500 on any one boat and its equipment, furnishings, or outboard motor. An additional rate is charged. This extension is intended to take care of the assured who has one or more small

boats or motors but who does not have the need for an ocean marine policy such as he would buy to cover an inboard powerboat.

The third exclusion refers to "property of any government or any subdivision thereof." This is necessary because a government official may be responsible personally for a large amount of government property. For example, an Army officer may be held responsible for equipment placed in his care. This may be used or worn by him and thus would be covered by the personal property floater if there were no exclusion pertaining to it. Obviously the assured is not going to carry sufficient insurance to cover such government-owned property. In the absence of an exclusion referring to government property, the insurance company would be insuring property for which it receives no premium.

Business property is the subject of the fourth exclusion, which reads:

> Unscheduled property pertaining to a business, profession or occupation of the persons whose property is insured hereunder, excepting professional books, instruments and other professional equipment owned by the assured while actually within the residences of the assured.

This exception of property within the residences of the assured means that if a doctor or lawyer had his office in his residence, his professional books and equipment located within the residence would be covered. A question might arise in connection with a professional man who owns an apartment house and has his office on the first floor and his living quarters on an upper floor. The question is whether the assured's residence is limited to his living quarters or consists of the entire building. It is likely that any ambiguity would be resolved in favor of the assured. An underwriter can provide specifically for such a situation whenever he becomes aware of it before writing a policy and can either include or exclude the professional property.

Property pertaining to a business, profession, or occupation of the assured may be scheduled specifically if the property qualifies for inland marine coverage and if the inland marine rating bureau rules for the specific class require or permit scheduling of such articles. Such property is scheduled at the rates that would apply if the property were insured under an individual inland marine policy. Unless such property is scheduled, it is not covered when outside the residence of the assured.

There is no intention to permit the scheduling and coverage of

commercial property under the personal property floater. The business and professional coverage is intended to be subsidiary to the personal coverage.

Occasionally in connection with a loss of money, the question arises whether it was business or personal money. When a man owns his own business, there is likely to be an intermingling of his business and personal funds. If he loses some money, he is likely to make a claim under his personal property floater policy. It is only when the money has been earmarked clearly for business uses that the insurance company is able to maintain that the money is business property. Otherwise, the money is claimed as personal property, and the insurance company usually accepts the word of the assured and pays the loss.

The framers of the personal property floater felt that the extremely broad coverage of the policy could not be provided for articles that are broken easily by carelessness on the part of the assured. The fifth exclusion is designed to eliminate these breakage claims and reads that the policy does not insure:

> Against breakage of eye glasses, glassware, statuary, marbles, bric-a-brac, porcelains and similar fragile articles (jewelry, watches, bronzes, cameras and photographic lenses excepted), unless occasioned by theft or attempt thereat, vandalism or malicious mischief, or by fire, lightning, windstorm, earthquake, flood, explosion, falling aircraft, rioters, strikers, collapse of building, accident to conveyance or other similar casualty, nor unless likewise occasioned, against marring or scratching of any property not specifically scheduled herein.

Misunderstandings arise occasionally regarding the term "glassware." The dictionary definitions include in the term almost anything made of glass. Many assureds think of glassware as drinking glasses, dishes, and perhaps ornaments. They do not think of a mirror, for example, as a pieee of glassware. The term is not clear when an attempt is made to classify such an article as a mirror encased in a frame. The insurance companies have to make many interpretations of these borderline cases.

Difficulty also is experienced in connection with the term "similar fragile articles." The insurance companies usually depend upon the legal principle known as *ejusdem generis,* which means "of the same kind." The application of the principle to the phrase "similar fragile articles" requires not only that the other articles be fragile but also that they be similar to those just enumerated. For example, the word "porcelain" refers to a particular type of pottery,

but a piece of pottery that is not porcelain in a strict sense might be considered a similar fragile article because of its close similarity. On the other hand, it might be argued that a fragile article made of wood is not excluded if it is not similar to eyeglasses, glassware, statuary, marbles, bric-a-brac, or porcelains.

The exceptions to the exclusion are intended to make the personal property floater as broad as a fire and extended coverage policy in its application to these fragile articles. The exclusion is intended to eliminate losses due to careless handling, but it is not designed to exclude losses that result from fire and other catastrophes over which the assured has little if any control.

"Marring or scratching" is another term that is difficult to interpret. The definitions of the two words are somewhat vague, and frequently there is a difference of opinion between insurance company and assured about whether a damage is large enough to become a claim or is excluded by the marring exclusion. More will be said about this problem in connection with deductible policies. One of the advantages of the deductible form of the personal property floater is that it eliminates many misunderstandings over small claims.

The sixth exclusion pertains to loss due to "mechanical breakdown." This refers to the breakage of parts in a machine, such as a refrigerator or sewing machine. It is interesting to note that consequential loss resulting from a mechanical breakdown is not excluded. In some cases freezer units have broken down and food has spoiled as a result. The breakage in the freezer mechanism is not covered by the policy, but there is no exclusion applying to the loss of food that was a consequence.

The seventh exclusion is a corollary to the mechanical breakdown provision and applies to loss or damage "to electrical apparatus caused by electricity other than lightning unless fire ensues and then only for loss or damage by such ensuing fire." This is similar to the electrical damage clause discussed for other types of inland marine coverages and has a similar application.

Exclusions of loss due to wear and tear and loss due to deterioration, moth, vermin, and inherent vice may be grouped together and considered to be an eighth exclusion. These are similar to comparable provisions in other "all risks" policies, and the application is similar.

The ninth exclusion applies to:

Loss or damage caused by dampness of atmosphere or extremes of temperature unless such loss or damage is directly caused by rain, snow, sleet, hail, bursting of pipes or apparatus.

This excludes loss due to the damp atmosphere that is natural around lakes and seashore areas, but it is not intended to exclude a loss resulting from moisture escaping from a broken steampipe. It excludes loss resulting from freezing if the furnace is allowed to go out, but it would not exclude a loss that resulted from freezing when the windows were broken by hail and the freezing temperature within the house was a result of the broken windows.

A tenth exclusion relates to damage "to property (jewelry, watches and furs excepted) occasioned by or actually resulting from any work thereon in the course of any refinishing, renovating or repairing process." It is felt by the underwriters that the insurance companies cannot accept the responsibility for the work of repairmen, but that the assured should investigate the reliability of the people to whom he entrusts his property and should hold them responsible. An exception is made in the case of jewelry, watches, and furs in order that the coverage may be comparable to that provided under specific policies.

Questions have arisen in connection with the word "renovating." Is the laundering of clothing or the cleaning of a suit a renovation process? Renovation denotes a renewal of the property to its former condition. A close interpretation might be to the effect that mere cleaning, such as laundering, is not renovation, since it does not restore the clothing to its condition of newness. Some underwriters feel that the dry cleaning of a suit is renovation because it does more than clean—it reshapes the suit and restores an appearance of newness.

The eleventh exclusion concerns loss to property on exhibition at fairgrounds or on the premises of any national or international exposition unless the premises are described specifically in the policy. The reasons for this exclusion have been discussed in connection with fine arts and similar property.

The twelfth exclusion refers to war damage and is similar in its wording and effect to those already discussed in connection with other inland marine policies.

Declarations of the Assured

The Inland Marine Insurance Bureau form provides a space for filling in a statement of the values declared by the assured. These are broken down by groups of property such as would be owned by a typical dwelling resident. This declaration of values is made on the application the assured is supposed to fill out when he applies for a personal property floater policy. The insertion of these values in the form has no effect on the liability of the company. The declarations are put in the form in order to call to the assured's attention any inadequacy in the amount of insurance.

There has been a proposal to make the declarations of the assured a limitation on the liability of the company for the various types of property enumerated. The desirability of such a move will be discussed later in this chapter, along with a proposal to insert a co-insurance clause and other possible changes intended to improve the loss experience.

Other Insurance

It is the intention of the underwriters that the personal property floater shall replace all other policies the assured might have or be able to purchase to cover his household goods, clothing, and similar personal property. The Inland Marine Insurance Bureau form prohibits other insurance on the property covered by the policy (unless specific permission for such other insurance is endorsed on the policy), except that other insurance is permitted on property of others on the premises of the assured, the property of servants, residences and property not personal in nature that are covered against theft and vandalism, unscheduled jewelry, watches, and furs, money and documents, equipment of vehicles, and business or professional property.

If there is other insurance that would attach on such property and would have applied to the loss had the personal property floater not been purchased, the personal property floater applies as excess insurance on that property and pays only after the other insurance has been exhausted.

The application of this "other insurance" clause is not difficult in respect to the extensions of coverage to the property of servants, residences and other property covered against theft and vandalism, unscheduled jewelry, watches and furs, and money and documents.

These are specific types of property. There may be other insurance on those types of property, either in the name of the assured or in the name of another interested party. It merely is necessary for the adjuster to determine whether there is any other insurance that would apply and then apply the personal property floater coverage as excess insurance after the other insurance is exhausted.

There may be a misunderstanding in connection with the "other insurance" provisions as they relate to the exclusions among which are listed equipment of conveyances and professional property. The "other insurance" clause cites the two paragraphs of exclusions by number instead of referring specifically to the types of property. The impression might be gained that the personal property floater would apply as excess insurance on all the types of property excluded in those two paragraphs. The "other insurance" clause does not extend the coverage of the policy in any respect but applies to types of excluded property that may be covered under certain conditions. A policyholder may misunderstand the intent of the "other insurance" clause. For example, he might get the impression that the personal property floater would apply as excess insurance to animals (which are excluded from coverage) because animals are listed in the same paragraph as equipment of conveyances. Such is not the case. The excess coverage of the "other insurance" clause applies to the equipment and furnishings of the vehicles and conveyances mentioned in the paragraph when removed therefrom and on the premises of the assured. For example, the motor from a boat might be removed from the boat and be on the premises of the assured. This is covered by the personal property floater under the terms of the paragraph, but there may also be an insurance policy on the boat that would cover the motor even when it is dismounted from the boat. In such a case, the personal property floater coverage on the motor would only pay any excess after the boat insurance policy had paid its full liability for the loss. The same reasoning would apply in the case of any business or professional property that would remain covered under the terms of the exclusion concerning business and professional property.

The Transportation Insurance Rating Bureau form has an "other insurance" clause prohibiting other insurance on the property covered by the personal property floater but providing that if such other insurance does exist, the personal property floater shall apply as excess over all other insurance.

The principal difference in the application of the two clauses would arise if the assured had taken out another policy covering all his personal property without any permission for doing so in the personal property floater. The stock company form prohibits such other insurance, and the existence of the other policy would be a violation of the terms of the personal property floater.

The mutual form makes the personal property floater the excess policy when any other policy has been procured by a person whose property is insured under the personal property floater.

Personal property floaters are sold to many people who have other policies covering their personal property. It is intended that the personal property floater shall replace all other policies, but it would work a hardship on the assured if he were forced to cancel his other policies on a short-rate basis in order to secure a personal property floater. Accordingly, the personal property floater rules provide for existing specific insurance and permit the allowance of a credit in calculating the premium.

The endorsement used to give permission for the other policies lists each policy specifically, giving the type of policy, the amount of coverage, the effective and expiration dates, and the amount of unearned premium credit allowed.

The endorsement further provides that the personal property floater shall be excess insurance above such existing specific insurance but that in case the amount of a loss should exceed the total of the specific insurance, the personal property floater shall pay the difference between the amount paid by the specific insurance and what would have been payable under the personal property floater had no specific insurance existed.

For example, suppose the amount of the personal property floater was $10,000 and there was a specific fire policy in the amount of $5,000. In case of a total loss by fire, the fire policy would pay $5,000 and the personal property floater would pay $5,000. However, if the loss amounted to $12,000, the personal property floater still would pay only the $5,000. The clause does not permit adding the full personal property floater amount to the amount of the specific insurance.

The credit to be allowed for the specific insurance is the pro-rata unearned premium on the specific insurance to the expiration of the personal property floater or the expiration of the specific insurance, whichever shall occur first. It sometimes occurs that the

rate for the fire insurance policy was higher than that charged for the fire portion of the personal property floater (for example, when there has been a rate reduction since the fire policy was issued). In such cases the credit for the fire coverage must be calculated at the fire rate charged in the personal property floater calculation and not at the higher rate of the fire policy. If the specific policy is larger in amount than the personal property floater, the credit must be figured on the amount of the personal property floater and not on the larger specific amount.

Reinstatement of Losses

Practices in connection with the personal property floater follow those of the fire insurance field in considering that any loss paid under the policy reduces the amount of insurance by the amount of the loss payment. It is customary to charge the assured a pro-rata premium for reinstatement of the policy to its full original amount. In the case of a small loss, the reinstatement premium may be so small that it would be more costly for the insurance company to put the payment through its books than not to collect it. In recognition of this situation, the rules of the inland marine rating bureaus provide that any loss is to be reinstated automatically but that the assured shall be charged a pro-rata additional premium from the date of the loss only if the loss exceeds $250.

Combination Policies

An insurance company may wish to integrate the personal property floater with a personal or householder's liability policy such as may be issued by a casualty company. This may be done in co-operation with a casualty company in order to provide a complete householder's insurance coverage in a single document. The rating bureau rules prescribe that this may be done only when the personal property floater portion of the coverage is separable from the entire coverage and if the personal property floater coverage remains the same as provided for in the rules of the bureau.

Deductible Policies

A large proportion of personal property floaters are made subject to a deductible clause on all losses except those from fire, lightning, windstorm, cyclone, tornado, hail, explosion, riot, riot attending a

strike, smoke, damage by vehicles or aircraft, burglary, or holdup. (In states where the windstorm rate is added specifically as part of the personal property floater rate calculation and where the rate used contemplates a deductible windstorm coverage, the deductible also applies to the windstorm coverage under the personal property floater.)

The deductible clause serves two purposes. First, it eliminates the handling of many small losses and thus reduces the claim expenses of the insurance company. Secondly, it tends to make the assured more careful.

The degree of insurance coverage has an effect on the carefulness of the assured. If he has no insurance on his property, he knows that he will have to stand any loss himself and he is likely to exercise extreme care. The existence of full insurance gives the assured a comfortable knowledge that any loss will be paid for, and it is natural that he should relax his vigilance.

The saving to the insurance company under a deductible policy is especially high in connection with an "all risks" policy. The coverage is so broad that there are numerous small claims. The savings from the elimination of these losses are passed on to the assured in the form of lower rates.

The deductible does not apply to scheduled items. Full coverage is provided for scheduled items so that the personal property floater is comparable to specific policies on such property.

Substantial rate credits are given for the use of a deductible clause. The existence of the deductible clause appears to have the salutary effect on losses that the theory of the deductible would suggest. The rate credits are higher than would be justified by the saving in small losses alone and take into account the fact that people who buy deductible policies seem less likely to have a loss of any kind.

The inland marine rating bureaus provide for $15 and $25 deductible clauses. The Transportation Insurance Rating Bureau rules also provide for a $50 deductible and for a $25 franchise clause.

The franchise clause is borrowed from ocean marine practices and provides that, although no loss shall be paid unless it exceeds $25, any loss in excess of that amount shall be paid in full. The credit for the franchise clause is less than that for the deductible clauses. There is no saving in loss when the amount exceeds $25, as there is in the case of a deductible clause. In addition, there is a temp-

tation for the assured to inflate a loss somewhat in an effort to get it paid.

Frequently it may be somewhat indefinite whether a loss is, for example, $22 or $26. This can easily be the case with personal property, in the case of which depreciation never is exact. The assured may ask for $26, knowing that he will collect his loss in full if he can convince the company. In the case of a $25 deductible, he would collect only $1.00 for the $26 loss, and he might not consider it worth while to push the amount beyond the deductible.

Rates

The rating system for the personal property floater is based upon a mixture of fire and casualty insurance rating theory. The basic rate is the fire insurance rate for the property as promulgated by the fire insurance rating bureau having jurisdiction in the place where the residence is located. To this basic fire rate is added a loading to pay for the other coverages included in the policy. (In certain states where the windstorm hazard is considered to be high, the windstorm rate is not included in the loading but is added specifically.) The rate of the loading varies according to the size of the policy. For example, in one territory the loading for the first $5,000 of coverage is $1.45 per $100 per year, for the next $5,000 eighty-five cents, for the next $10,000 forty-five cents, for the next $30,000 fifteen cents, and for all in excess of $50,000 ten cents.

The full fire insurance rate is used regardless of the amount of the policy. This is because a total fire loss is a possibility in almost any residence, and there is much the same chance of a total fire loss in a $50,000 home as in a $10,000 home.

In connection with losses from other causes, there is not the same chance of a total loss in the larger policies. For example, in an apartment or small dwelling, a leaking water pipe or bathroom fixture might result in water damage to most or all of the assured's property. In a large house, the chances of such damage to all the property are remote; it is likely that such an occurrence would damage a relatively small part of the assured's property. This is held to justify a reduction in the rate of the loading for the larger policy amount.

The amounts of the loadings for the various policy amounts originally were based largely upon the rates for burglary insurance.

It has been an established custom in the burglary field to vary the rates according to the size of the policy, because a burglar might easily clean out a small dwelling but it would be relatively difficult for burglars to take all the property from a large residence.

It would seem more logical to build up the rate from the fire rate plus the rate for "extended coverage" plus a loading to cover burglary and the other miscellaneous hazards. The personal property floater rating system was started before the extended coverage addition to the fire policy was nationwide. A judgment factor was included in the loading to take care of windstorm (the principal extended coverage hazard) except in those states where the hazard of windstorm was considered to be high. If there were any general revision of the rating system for the personal property floater, it is likely that the underwriters would seriously consider a system using the fire rate plus the extended coverage rate plus a loading.

In several states the rates for windstorm coverage contemplate a deductible from such coverage. In all such states where the specific windstorm rate is used in making up the personal property floater rate, it is required that the same deductible be applied to the windstorm coverage of the personal property floater as is contemplated in the windstorm rate. Otherwise, the windstorm rate to be used must be the rate for full coverage.

A credit is given in the rate when a deductible clause is attached to a policy. The credit for a $15 deductible is twenty per cent of the premium charged for the blanket portion of the policy; for the $25 deductible the credit is thirty per cent of the premium for the blanket portion of the policy. The credit for the deductible clause applies to the entire premium for the blanket portion, even though the deductible does not apply to losses from fire, lightning, windstorm, hail, explosion, riot, smoke, vehicle and aircraft damage, burglary, and holdup. The rating system would be more consistent if the credit for the deductible clause were applicable only to the portion of the rate that covers the losses to which the deductible applies.

The credit applies only to the portion of the premium that pays for the unscheduled portion of the policy, because the deductible does not apply to scheduled items.

There are maximum and minimum amounts of credit for the deductible clauses. For example, the credit for the use of the $25 deductible clause shall not be less than $15 nor more than $40 on

annual policies, and corresponding maxima and minima exist on other deductible forms and terms. Many underwriters believe that a substantial credit is justified even for a small policy and that the minimum credit set out for each amount serves to encourage the purchasers of small policies to take the deductible form. The maximum is considered justified because the deductible becomes less important as the size of the policy increases. The larger the amount of the policy, the greater is the likelihood of larger losses. The $15 or $25 deductible is relatively much more important on a $500 loss than on a $5,000 loss and becomes of negligible effect on a $50,000 loss.

Premium payment plans. The premiums for personal property floaters are large when compared to those of other policies covering household furniture and personal property, especially when the assured wants to buy a policy for three years in order to get the term discount. There has arisen a demand for some method of spreading the payments over a period of time. One method of accomplishing this is to issue three policies with staggered expiration dates. The three policies are all concurrent in their terms and give permission for the existence of the other policies. One policy may expire each year; the assured can pay one-third of the total premium each year and still get the advantage of the term discount.

Another method of spreading the premium payments is by the use of a three-year policy with the premium payable in three annual installments. An extra loading is added to the premium to carry the spreading of the payments. One method permitted by both inland marine rating bureaus is to add a charge of two and one-half per cent of the policy premium and then provide for payment of half the resulting total when the policy is written, thirty per cent of the total on the first anniversary date, and the remaining twenty per cent on the second anniversary date. This is known as the "50-30-20 plan" of installment payment of premium.

A variation of this plan that is permitted by the Inland Marine Insurance Bureau rules provides for adding a charge of three and one-fourth per cent to the premium, with the first installment making up forty per cent of the total and the remaining two thirty per cent each. These plans are not permitted in all states.

In at least one state the interest laws require the taking of a note for the financed premium. Another state has ruled that install-

ment policies are three-year policies and that the full unearned premium reserve must be set up just as if the entire premium for three years had been collected.

Variations in rating method. In two states there are flat rates for the personal property floater. Instead of using the fire insurance rate plus a loading, the companies use flat rates in the states of Illinois and Kansas. These flat rates are average rates and are based upon the average fire insurance rates for different types of construction and fire protection. In the state of Illinois, the counties of Cook and Lake, in which the metropolitan area of Chicago is located, take higher rates than the rest of the state. This difference is based upon the theory that there is a higher burglary and theft hazard in the metropolitan centers than there is in country areas and small cities and towns.

The use of flat rates results in some inequities. If a prospective assured lives in a building where the fire rate is high (owing to a commercial occupancy in the building, for example), the fire insurance rate may be as high as the personal property floater rate. The company would be faced with the choice (1) of writing the personal property floater at a rate little if any higher than the rate for fire insurance alone or (2) of refusing to write the policy. The prospective policyholder might be unable to get a personal property floater even if he were willing to pay a higher rate. The companies are bound by their filings or those of the rating bureau to which they belong, and it would be a violation of the rate regulations for them to issue a policy at other than the flat rate filed with the insurance department.

The rate regulatory laws provide that a company can charge an assured a rate higher than the filed rate when the assured is aware of the higher charge and consents to it. However, the procedure is cumbersome because the company has to file a consent with the state insurance department in each such case in order to have it on record that the filings are not being violated.

Minimum Premiums

The rules for issuing many types of insurance coverages set up minimum premiums. A company will not issue a policy for a smaller premium than the minimum even though the rate and the amount of insurance are such that a smaller premium would be produced by the application of the rate to the amount of insurance.

This minimum premium is justified because it costs an insurance company several dollars to issue a policy. The cost varies between companies, depending upon their efficiency of operation. The minimum premium covers the cost of the printed documents that make up the policy, the time of the personnel who do the clerical and underwriting work, and the many miscellaneous costs entailed in the operation of an insurance company. The minimum premium is intended to cover these minimum expenses plus an amount of premium for the coverage provided by the policy.

For property insurance coverage, the minimum premiums vary from \$2.00 to \$10, depending upon the simplicity of issuing a particular type of policy and the estimated cost of issuing it. In workmen's compensation insurance one factor included in the premium is known as an "expense constant." This is intended to take care of the cost of issuing a policy and other fixed expenses, and serves much the same purpose as the minimum premium in property insurance coverages.

The minimum premiums for the personal property floater are much higher than would be justified merely by the cost of issuing the policy. The lowest minimum premium is \$20, which is the minimum for the \$50 deductible policy of the Transportation Insurance Rating Bureau, and the full coverage policy cannot be written for less than \$60 for one year.

These relatively high minimum premiums are necessary because of the broad coverage, which produces numerous small claims. The majority of persons who buy fire insurance policies never make a claim against their insurance companies because they do not have damaging fires. There are several thousand fire insurance policies for each one that results in a claim. In contrast, claims are made under a relatively large number of personal property floaters. Regardless of the amount of insurance under a personal property floater, the assured is likely to have some loss of personal belongings during the policy term. The minimum premium for the personal property floater is considered justified by the frequency of losses, which in turn are a result of the broad coverage provided by the policy.

Loss Experience

There are no figures available showing the loss experience of all companies during the first few years that the personal property

floater was written. It appears that the experience was good. The insurance companies supported the amendments to the "Nation-Wide Definition" that were necessary to permit the writing of the policy in more and more states. Companies competed vigorously for the business, and there was no general feeling that the policy was a problem. During World War II, about the time that the last of the states had approved the changes needed to write the policy, there appeared some indications that a bad loss ratio was developing. In the late 1940's, after consolidated reports of the experience of all companies became available, it was evident that the loss experience was unsatisfactory. The personal property floater appeared to be a real problem to inland marine underwriters. Ratios of losses incurred to premiums earned were being reported well over the accepted break-even point and began to appear in the high 60's and in the 70's.

It is probable that the early favorable experience was partly illusory. The insurance companies were writing a larger and larger volume of the personal property floater each year, and the experience was calculated as a ratio of premiums written to losses paid. Many insurance companies made no segregation of one-year and three-year premiums, so that the losses for many policies kept coming in two or three years after the premium had been reported. The rating bureaus now are calling for information in such a way that a good estimate of the ratio of losses incurred to premiums earned can be made each year. This will enable the insurance companies to see what the actual loss experience is each year.

It appears that there was an increase in the loss ratio after the policy had been available for a few years. This may be accounted for by an increasing awareness on the part of the policyholder that this is an extremely broad policy. Policyholders never had been able to collect from their insurance companies for many of the losses covered by the personal property floater. They did not think to make claims for losses that actually were covered. As they became aware of the coverage, they filed the claims as they occurred. This later experience is more nearly the true experience that may be expected from this type of coverage.

Another factor that may have had some influence on the change in loss experience is the difference in territories. The policy was written for many years in the less populous sections of the country. It was not introduced into the heavily settled East Coast areas

until the early 1940's. Property of city dwellers is considered by many underwriters to be subject to more hazards than property located in smaller towns and cities. The rating territories are set up to take care of these differences in hazard, but the loss experience may show that adjustments will be needed to smooth out some inequities between territories.

Underwriting Problems and Proposals

Underwriters recognized from the first that the moral hazard is extremely important in the underwriting of the personal property floater. Many losses under this policy cannot be checked by an adjuster, and the company must depend entirely on the word of the assured that a loss has occurred. An example of this type of loss is that for which the mysterious disappearance claim is made. There may be no way that an adjuster can verify or disprove that an article has been lost. If the assured is willing to swear that he has lost it, the company is obligated to pay the claim.

Underwriters check a policyholder's general reputation for honesty by means of credit reports and inspection services. Oftentimes it is possible to determine whether the prospective assured has presented other claims. A person who presents numerous claims is likely to have an unfavorable loss record as a personal property floater assured.

Policyholders may get the idea that the deductible may be circumvented by consolidating claims. It is the theory of the deductible that the assured will stand the small losses himself, and the rates are based on that premise. An assured may find that he has lost several articles at different times. If the claims were presented separately, the amount of the deductible would be subtracted from each claim. However, if the assured falsely presents them as a single claim, only the amount of a single deductible will be subtracted. Occasionally assureds inflate their claims in order to make up for the deductible. Underwriters keep alert for any indication that an assured is inclined to take advantage of the broad coverage in this way.

Another factor that has had an adverse effect on the loss ratio is the tendency for an assured to carry only a small amount of insurance in relation to his actual value. The rates for the personal property floater are based on the assumption that the amount of insurance will be at least eighty per cent of the value. It has been

difficult to get assureds to carry insurance in amounts even approaching this percentage because they have been accustomed for many years to carry fire insurance on their household belongings in amounts much less than their value. It is not uncommon for a householder to carry $5,000 of fire insurance on $10,000 worth of property, on the assumption that the fire department would arrive in time to control any blaze that threatened to destroy his property. The chances of fire's attacking any specific property are so slight that the fire rating bureaus have worked out satisfactory rates to take care of the low amount of insurance ordinarily carried on household goods.

A low proportion of insurance to value has a pronounced effect on the personal property floater loss ratio. The chances of loss to any specific property are much higher than under a fire policy because the coverage is so much broader. The chances of loss increase as the value of the property increases. The person who has $25,000 worth of property is much more likely to have a loss than the person who has only $10,000 worth of property, because he has more valuable jewelry and other property attractive to burglars and robbers. The amount of insurance under a personal property floater must be close to the actual value in order to sustain the losses expected under so broad a coverage.

There are indications that help an underwriter to determine whether the amount of insurance is close to the actual value. A person who has a $50,000 home obviously is underinsured if his personal property floater covers for only $3,500, for example. An extensive schedule of jewelry and furs may be an indication that the amount stated in the miscellaneous articles section of the policy is too low. Some of the inspection companies include an estimate of the value as a part of their service. The problem of insuring to value is particularly acute during a period of inflation, when all prices are going up. Many insurance companies have made it a practice to require an automatic increase in policy amounts approximately equal to the increase in the cost of goods. Others have handled cases individually but have made careful inquiry concerning the amounts of value to be covered by each policy.

It has been proposed that a coinsurance clause be added to the policy. Many underwriters consider a coinsurance clause impractical because of the difficulty of determining the value of household furniture, clothing, and other personal belongings that have been

in use. In only a few places in the United States has coinsurance been used on household furniture fire insurance policies. The presence of such a clause in the personal property floater would complicate every loss adjustment, because the adjuster would have to agree with the assured not only on the amount of loss and damage but also on the sound value of the assured's entire belongings. There certainly would be much dissatisfaction when the assured did not understand the effect of the coinsurance clause and the loss payment was reduced because of underinsurance.

Widespread dissatisfaction would be undesirable for the insurance industry as a whole, and it might have a serious effect on the sale of the personal property floater. The assured would be likely to get the impression that the companies were selling a trick policy that promised to pay for losses of all kinds but actually paid in full only under rare circumstances. Coinsurance has been troublesome enough in connection with business insurance, and many underwriters hesitate to inject it into a man's personal insurance.

Underwriters have proposed that the declarations of value on the personal property floater be made limitations of liability. The assured is already required to declare the amount of his values in each of several different classes of goods but, as already pointed out, these declarations now have no effect on the liability of the insurance company. They could be made limitations without putting any undue strain on the policyholder's ability to understand the procedure followed.

Suppose, for example, the amount filled in for the item for "silverware" were $200. The assured could understand easily that he could not collect more than $200 on silverware in case of loss. If this proposal were adopted, it might be desirable to break the list into a few more items, but the items now appearing on the form would influence the average policyholder to consider carefully whether he had enough coverage on the various classes of property that make up his personal belongings.

Many insurance companies are discouraging the sale of the full coverage form of the personal property floater in favor of the deductible forms. It is their feeling that small losses are in the nature of wear and tear losses even if they do arise from seeming accidents. It is difficult to word exclusions so that they keep out all the wear and tear losses. The deductible is easy for the assured to

understand, and he is accustomed to it in connection with his automobile insurance.

It appears from the experience figures available so far that the deductible policies produce a better loss ratio. In addition to eliminating small and troublesome claims, the deductible is most attractive to persons who are naturally careful and who have few losses of the mysterious disappearance type.

The statistics that are being accumulated will help to permit adjustment of rating inequities where rates are too low. Inland marine underwriters are committed to providing broad coverage and are striving to make the personal property floater a satisfactory policy to both the insurance company and the assured.

Variations of the Personal Property Floater

The preceding discussion has been limited to the forms of the personal property floater that have been filed by the two principal inland marine rating bureaus. There are several variations of the form in use by independent companies that are not members of or subscribers to any rating bureau.

The principal difference between bureau and independent forms is the extension of coverage on unscheduled jewelry, watches, and furs in the independent forms to more than the amount allowed in the bureau forms. A relatively small proportion of the personal property floater coverage written in the United States is written according to these variations from the bureau forms. An examination of any particular form will reveal the points on which it varies from the forms generally in use.

One particular type of variation from the personal property floater deserves mention. This is a specified perils form of coverage, as contrasted to the "all risks" coverage of the personal property floater. One version of it is in use in the state of Missouri under the name "Modified Personal Property Floater." Another version has been filed by the Transportation Insurance Rating Bureau under the name "Combined Coverage Form." Other variations are used by individual companies under other names.

Most of these policies cover against loss by fire, lightning, windstorm, hail, explosion, riot, civil commotion, damage by vehicles and aircraft, smoke from faulty heating apparatus, vandalism, malicious mischief, burglary, and holdup. Few of these forms include any coverage against loss due to mysterious disappearance,

although a limited form of mysterious disappearance coverage has appeared in a few of them.

The minimum premiums for these forms are much lower than the minimum premiums for the personal property floater. The forms are designed to provide a limited floater coverage for the person who does not feel that he has sufficient value in his personal property to justify his buying the personal property floater. It is a form of coverage that may be particularly attractive to the man who has only $1,000 to $3,000 worth of personal property. It allows him to buy a reasonably broad insurance protection in a single policy at a cost much below that of a personal property floater, which to some individuals may be prohibitive.

The rates, however, above a certain valuation are not much different from those for the personal property floater. When a person has more than about $3,000 worth of personal property, there is not enough difference in cost between these limited coverage policies and the personal property floater to justify the purchase of the limited policy.

Some inland marine underwriters feel that a broad insurance coverage can be written successfully only for those people who have large values and whose premiums would be relatively high. Other underwriters feel that it is worth while to sell a somewhat limited form of floater coverage to the person whose values are nominal.

Questions

1. Name some of the insurance policies an assured had to purchase in order to get reasonably complete protection on his personal property before the personal property floater was developed.
2. Why did the "Nation-Wide Definition" prohibit the writing of the personal property floater?
3. What is personal property?
4. What is meant by the phrase "members of the assured's family of the same household"?
5. What property is covered by the personal property floater in addition to property belonging to the assured?
6. Under what circumstances does the personal property floater cover real property?
7. Why do inland marine underwriters consider it important to have valuable articles specifically scheduled on the personal property floater?

8. What are the important limitations on the coverage under the personal property floater?

9. Discuss the extent to which the exclusions determine the coverage of the personal property floater.

10. Under what circumstances is the personal property floater written to include permission for other insurance?

11. Discuss the advantages to the assured and to the insurance company in having a deductible clause on a personal property floater.

12. Why is the rate less for large amounts of insurance than for small amounts under a personal property floater?

13. Why is a higher minimum premium justified for the personal property floater than for a fire insurance policy?

14. What are some of the steps taken by underwriters to secure a good loss ratio for the personal property floater?

PART VII
General Inland Marine Problems

CHAPTER XX

Reinsurance of Inland Marine Business

THE INSURANCE BUSINESS operates by the application of a theory known as the "law of large numbers." It is impossible for an individual to determine in advance whether his property will suffer loss from an accidental occurrence during a given period, but if a sufficient number of units are grouped together, the number of accidental occurrences in the group will be approximately the same over one period of time as over another like period. For example, a person cannot know whether his dwelling will burn down during a year, but the fire insurance companies can estimate rather accurately how many dwellings will burn each year in the United States. The insurance companies can average the loss for all the burned dwellings and calculate a rate for all insured dwellings that will pay the losses of those who do suffer misfortune.

The "law of large numbers" can be depended upon when the amounts of loss are all approximately the same size, such as in the dwelling house example cited. The results may be distorted, however, when some of the amounts of loss are much larger than the average in any group. Suppose instead of dwellings the subject of insurance consists of mercantile buildings. The average value might be $50,000, but there might be a few large department store buildings worth more than $1,000,000 each. The loss of such a large unit would distort the results as compared to the results to be expected if all units were of a similar size. No one insurance company insures a sufficient number of the high value properties for the "law of large numbers" to be effective in regard to these properties. In order to establish an average loss expectancy on large units, it is necessary for insurance companies to spread their liability among many different insurance companies.

This spread of liability on high value properties is accomplished by means of reinsurance. An insurance company that writes a policy for an amount larger than it desires to carry by itself may buy from another company insurance to cover a part of the lia-

bility. This is known as *reinsuring* the liability under the policy. A large piece of property, such as a suspension bridge worth many millions of dollars, may be reinsured in almost all the insurance organizations in the world.

The individual insurance company finds reinsurance necessary and convenient for several reasons. It enables the company to write policies for larger amounts than would be safe if the company were forced to stand all its losses by itself.

The management of each insurance company establishes a "net line," which is the largest loss the company officials believe the assets and surplus of the company should stand as the result of a single loss. This "net line" in many cases is small compared to the value of individual properties a company wishes to insure. It may be so small that a policyholder would have to buy dozens or even hundreds of policies from many companies to cover his property, depending on whether it is a moderate- or large-sized property. The insurance company is able to serve its policyholders and agents to better advantage by writing larger policies and passing a part of the liability to other insurance companies by way of reinsurance.

A second advantage of reinsurance is that it can be made to spread heavy losses over a period of years and thus stabilize the operations of the company. Insurance company management considers it desirable to avoid wide fluctuations in loss experience from year to year. The reinsurer may arrange to pay an agreed proportion of any large loss the originating company may have. The reinsurance premium paid by the originating company is adjusted upward or downward each year in accordance with the losses paid by the reinsurer. This has the effect of financing the large losses of the originating company over a period of years and avoids wide fluctuations in earnings.

A third and extremely important function of reinsurance is the spreading of catastrophe losses over many companies. No one company or small group of companies could stand the impact of such losses as the San Francisco conflagration of 1906, the New England hurricane of 1938, or the Texas City explosion of 1947. Catastrophe reinsurance consists of an agreement by a reinsurer to pay the originating company if a catastrophe results in an extremely large loss.

For example, a company may feel that the largest amount it might be liable for in a disaster would be $1,000,000 but that it

could stand only $100,000 of this amount itself. The company can purchase a catastrophe reinsurance contract that would call upon the reinsurer to pay the excess of any loss over $100,000 up to the $1,000,000. This would be known as a $900,000 excess reinsurance over $100,000. The originating company would pay the first $100,000 of any loss and the reinsurer would pay the next $900,000. In case the loss exceeded $1,000,000, the originating company would have to pay any excess of that amount itself unless it had a second excess reinsurance contract above that figure.

A fourth function of reinsurance is the reduction of the unearned premium reserve. This may be incidental at times, but it assumes considerable importance during periods of inflation when the companies are writing large amounts of term insurance. Insurance companies are required to set up a reserve for unearned premium so that if the company goes out of business it will be able to reinsure all its outstanding liability in another company or pay back the unearned premiums to its policyholders. The reserve that must be set up does not make allowance for agents' commissions or other acquisition costs. For term policies the unearned premium reserve plus the acquisition cost actually is more than the company has taken in. For example, when an insurance company writes a five-year term insurance policy, it is required to set up an unearned premium reserve that may be as high as ninety per cent of the premium. The company will have paid out perhaps thirty per cent of the premium for agent's commission and other acquisition costs. The difference must be taken from the company's surplus until the premium is earned at a later date, when it may be removed from the reserve. The amount that must be transferred from surplus to the unearned premium reserve account is large during a period when the company is writing much new business. Reinsurance of part of the new business transfers the problem of the unearned premium reserve to the reinsurer, since the originating company does not have to set up unearned premium reserves on business that has been reinsured in another company.

Reinsurance is advantageous to the policyholder and to the agent of the insurance company. The spread of liability among many insurance companies gives greater stability to all of them and lessens the danger that any one will be financially embarrassed as the result of a catastrophe. It is a convenience to policyholder and agent because it permits an insurance company to write larger

policy amounts than would be possible if it were dependent entirely upon its own resources.

The reinsurance contract is between the originating company and the reinsurer. The assured under the policy of the originating company does not have any rights under the reinsuring contract. In case of the originating company's insolvency, the proceeds of any reinsurance are paid into the general funds of the originating company for the benefit of all creditors. The assured of the originating company cannot collect a loss from the reinsurer but must look for recovery to the remaining assets of the originating company.

Reinsurance Methods

Facultative reinsurance. The simplest form of reinsurance is the reinsuring by one company of part of a specific policy with another insurance company. This is called *facultative* reinsurance because it is optional with both companies. The originating company reinsures only those policies it considers beyond its own capacity. The reinsuring company is under no obligation to accept any individual piece of reinsurance but can reject the reinsurance if it desires. This is similar to the purchase of insurance by the individual policyholder. Such facultative reinsurance arrangements frequently are between two insurance companies that agree to help each other by this method. Professional reinsurers also write some facultative reinsurance.

Treaty reinsurance. An undesirable feature of facultative reinsurance is the fact that the reinsurer can reject it. The originating company never is certain it has reinsurance until the reinsurer has accepted the liability. This uncertainty led insurance companies to look for contract arrangements whereby the reinsurer agreed in advance to accept reinsurance under certain specified conditions. The reinsurer might accept a specified proportion of all business written by the originating company, or it might agree to accept a portion of a specified class of business. The possible variations are limitless, depending upon the needs of the originating company and what the reinsurer is willing to grant. Under this form of reinsurance contract or *treaty,* reports of business frequently are made by a simple list which is known as a *bordereau.* This *bordereau* is sent periodically to the reinsurer and includes reports of premiums, return premiums, losses, and any other items

that need to be cleared between the companies. Sometimes the treaty-reporting procedure will be further simplified and the only things reported between companies will be the totals of premiums and losses, without any reporting of individual accounts or policies.

Catastrophe reinsurance. A catastrophe reinsurance contract covers all the business of a company, or all of certain specified classes, such as fire, or wind, or inland marine. It makes no reference to individual insured properties. The premium paid to the reinsurer may be a specified amount or it may be a percentage of the originating company's premium income for the class or classes reinsured. The catastrophe reinsurance contract is similar to a deductible insurance policy. The assured (in this case the originating company) pays the primary part of the loss up to the amount of the deductible. The insurer (in this case the reinsurer) steps in and pays all, or a percentage of, the amount exceeding the deductible up to the policy limit. For example, in the case of a $1,000,000 loss a reinsurance contract may provide for payment of that part of any catastrophe loss that exceeds $100,000 up to a total payment of $900,000; or the contract may require the reinsurer to pay ninety per cent of the amount by which the loss exceeds $100,000 up to ninety per cent of $900,000. In the latter case the actual payment by the reinsurer on a $1,000,000 loss would be $810,000. Catastrophe reinsurance differs from a deductible insurance policy in that the deductible policy pays individual losses above the deductible amount, whereas catastrophe reinsurance usually pays only when more than one property is involved in the same loss.

"Excess of loss" reinsurance. Another form of reinsurance is known as "excess of loss." This is similar to catastrophe reinsurance in that the originating company pays the first portion of any loss, but unlike catastrophe reinsurance it may apply to a single property and in relatively low amounts. "Excess of loss" reinsurance is being used to some extent to replace pro-rata or facultative reinsurance. The reinsurer agrees to pay the amount by which any loss exceeds a specified figure up to the limit agreed to between the companies. The amount paid by the originating company to the reinsurer usually is a percentage of the premium income of the originating company. It is in many respects similar to catastrophe reinsurance, except that the amounts are set so low that the reinsurer will participate in the ordinary losses of the originating

company. The rate for this type of reinsurance depends largely upon the experience of the originating company, and there may be an arrangement whereby the originating company will pay back to the reinsurer its losses over a period of years.

The "excess of loss" method of reinsurance has the advantages that the reinsurance is automatic and the originating company does not have to make any reports of individual policies. The saving in clerical work may be large. It has the disadvantage that the originating company cannot take any credit in its unearned premium reserve for the reinsurance, because the reinsurance premium is paid as earned.

Pools and syndicates. A special form of reinsurance arrangement that is important to the inland marine underwriter is the reinsurance pool or syndicate. These are groups of companies that agree to reinsure each other for some special purpose.

Each member of the pool agrees to accept a certain proportion of the liability on each property insured. These pools may reinsure the policy of the originating company or each member of the pool may write its own policy covering a portion of the liability. In some cases there are combination policies on which the names of all members of the pool appear. In such cases the members may be direct insurers of the property owner rather than reinsurers in the strict sense of the term.

Reinsurance Practices

The liability of the reinsurer usually follows that of the originating company. In some cases the reinsurer has the right under its contract to intervene if the loss exceeds a specified amount or under other specified conditions. The more likely arrangement, however, is for the reinsurer to be obligated to follow any settlement the originating company feels it must make.

The reinsurer is dependent upon the originating company for a correct report of the premium and losses. The function of reinsurance calls for the utmost good faith between reinsurer and reinsured. Any company that sought to take advantage of its reinsurer would soon find itself without reinsurance facilities.

It is permissible under most reinsurance contracts for the reinsurer to pass a portion or all of its liability on to a second reinsurer. This is known as "retrocession." Many of the professional reinsurers make it a practice to accept a large line of reinsurance

and then pass a portion of the liability on to some other reinsurer. This results in a further spreading of the liability.

Reinsurance treaties may be unilateral or reciprocal. That is, they may provide that one company cedes reinsurance to the other, which accepts it, or they may provide that companies have the privilege of ceding to each other. Reciprocal treaties are common between companies of approximately the same size when they desire to spread their liability. Unilateral treaties may be entered into if a small company is ceding to a larger company or to a professional reinsurer.

The reinsurance "commission" is really a discount that is allowed in the transaction between companies. For example, the originating company may insure a property for a premium of $100. When the reinsurance is on a pro-rata basis, the company may desire to reinsure fifty per cent, or $50 of this premium. Instead of paying the full $50 to the reinsurer, the company might pay only seventy per cent of the $50, or $35. The thirty per cent commission is allowed to pay the acquisition cost, taxes, and handling expense of the originating company. The commission varies considerably, depending upon the acquisition cost of the originating company, the desirability of the reinsurance, and the expected loss experience.

Types of Reinsurers

Much reinsurance is exchanged between originating companies. These companies really are in the business of writing primary insurance for policyholders, and their reinsurance business is secondary.

The pools and syndicates of companies are merely facilities for making the exchange of reinsurance more convenient. Although they may appear to be in the nature of professional reinsurers, they really are branches of companies whose business is that of primary insurance.

The principal professional reinsurers are Lloyd's of London and the reinsurance companies. There are several of the latter in this country that do little or no primary insurance business but confine their activities almost entirely to the reinsuring of other companies' business. These companies may use one or all of the various reinsurance methods described.

Except for the mutual fire insurance companies, a large proportion of the catastrophe and large-line reinsurance finds its way to

Lloyd's of London, either directly from the originating company or by way of a reinsuring company. Lloyd's has made a specialty of reinsurance and has perhaps the greatest capacity of any single organization. Transactions with Lloyd's usually are handled in this country through brokers who specialize in handling Lloyd's contracts. An individual account usually is handled through a single broker, so that the entire capacity of the London market may be available through one source to a United States company desiring reinsurance.

The facilities of Lloyd's have proved particularly attractive to inland marine underwriters because almost any kind of inland marine line can be placed there. The Lloyd's underwriters have had wide experience in reinsuring properties all over the world, and they are willing to consider and quote a rate on almost anything that can be insured under an inland marine policy. The large capacity available from Lloyd's is another factor that is attractive to the inland marine underwriter who must place such lines as registered mail, jewelers' block, furriers' customers, bridges, and motor truck cargo.

Inland Marine Reinsurance Problems

The placing of reinsurance on inland marine lines differs in several respects from the reinsuring of other property coverages, such as fire and windstorm. The problem of capacity for extremely large lines may be serious. This is complicated by the fact that many inland marine lines have what might be termed a dual loss expectancy. There are the normal losses contemplated in the everyday operations of the assured and in addition there are the possible catastrophe losses. An example is the possible experience with motor truck cargo operation. In the course of a year an assured who is carrying loads worth a maximum of $25,000 may have many losses of a few hundred dollars each and an occasional loss approaching $25,000. These can be averaged over a period of four or five years when the trucker handles a large amount of business, and an adequate rate can be calculated for the loss expectancy. The problem of reinsurance is not serious because the reinsurer can calculate what his chances of loss may be on whatever limits the originating company may desire.

The large truck line frequently includes another and more disturbing factor. The assured may operate a large terminal and may

desire a million dollars' worth of insurance to protect him against liability for loss of cargo in a terminal fire or other catastrophe. It may be that the actual value in the terminal averages far below the million dollar figure but that there is the possibility of an accumulation over a week-end or holiday. The underwriter must arrange for reinsurance up to a million dollars to cover a possible total loss in a terminal fire.

Some inland marine policies insure property that is subject primarily to catastrophe hazards. Examples are registered mail, furriers' customers, and jewelers' block. The loss frequency is low, and the rates are extremely low, considering the tremendous limits required to cover the values involved. Nonnegotiable securities that are shipped by registered mail or express may be insured for one and a half cents per $1,000 of value or for a premium of $15 for a million-dollar limit of liability.

It is necessary that the reinsurance be spread as widely as possible so that the entire experience in the field may be available to the reinsurers. A single company could not afford to write the insurance on registered mail, for example, at the present low rates, because a catastrophe would wipe out all the premium it could expect to receive in a hundred years. When the entire experience of all insurance companies is combined through the medium of reinsurance, the rates can reflect the true experience of the business.

Bridges and exhibition properties are other examples of high concentrations of value that are subject to a single loss. At the New York World's Fair in 1939 and 1940, there was an accumulation of art works worth many millions of dollars. The San Francisco-Oakland Bay Bridge cost $78,000,000. The underwriter who has insurance to place on such property must search for the widest possible reinsurance market so that the liability may be spread over as much of the insurance industry as possible.

The unusual nature of the property insured under inland marine policies is another problem that faces the underwriter. The bridges and exhibition properties just mentioned are good examples of this. A fire underwriter can calculate with some degree of certainty what his chances are of sustaining a large loss. He can even estimate the chances of conflagrations. But the inland marine underwriter is faced with many unusual conditions. In the case of the Tacoma Narrows Bridge, the engineering had been done along accepted lines and the insurance had been placed on the assumption that the

hazards were normal. It later developed that the location of the bridge and the particular design resulted in an unexpected stress from wind, and the bridge collapsed with a loss to the insurers and reinsurers totalling $4,240,000.

The broad coverage provided by many inland marine policies is another factor that hampers the placing of reinsurance in channels available for the more ordinary hazards of fire and windstorm. The reinsurer has little loss experience upon which to judge whether the rate is commensurate with the hazards covered under an "all risks" form. Some reinsurers are reluctant to accept liability unless they have some experience upon which to base their judgments. This may restrict the reinsurance market, on an "all risks" form, to those reinsurers who have been dealing with inland marine coverages.

By paying careful attention to the question, there is much that the inland marine underwriter can do to ease his own problems and those of his reinsurance department in the placing of reinsurance on inland marine lines. Fundamental to the placing of reinsurance is sound underwriting of the primary line of insurance. An underwriter who has a reputation for conservative judgment, adequate rates, and careful investigation of all prospects will find his reinsurance more easily placed than the underwriter who always is willing to take a chance and who investigates only superficially before committing his company to a line of insurance.

The underwriting done by reinsurers is primarily an underwriting of the companies they reinsure. The reinsurer is committed to the underwriting policies of the originating company. The closer the thinking of the originating company coincides with that of the reinsurer, the more willing is the reinsurer to accept liability.

The coverage under an inland marine policy must be as broad as the assured needs, and the limits of liability must cover his value or his liability. Many underwriters make their reinsurance problems difficult by providing more in the way of coverage or limits than the assured needs.

Some motor truck operators like to advertise to their customers that they carry extremely high limits of insurance. The underwriter can examine the actual values of cargoes carried and determine whether the assured needs the limits requested or whether the limits are desired for advertising purposes only. Extremely

high limits complicate the placing of reinsurance, and they are likely to result in an increase in the rate for reinsurance.

Having one or two assureds who insist on limits far above those provided for the average policyholders of an insurance company may result in an increase in rate on the entire reinsurance portfolio of the company. In such cases, the increase may be allocated to the lines that request the high limits, and their rates may be adjusted accordingly. A frank discussion of the situation with the assured may convince him that he does not need the limits requested, especially when he finds it necessary to pay the extra cost.

Occasionally inland marine policies are issued without any maximum limits of liability. This practice has been followed in connection with bailees' customers policies. In each such case the company has figured out what it believes its maximum exposure to be and has quoted rates and coverages accordingly. The reinsurance company has to take into account the possibility that the actual liability may exceed that calculated by the originating company. The problem of securing reinsurance for such contracts will be lessened if the reinsurance company is allowed to place a limit in its contracts corresponding to what the originating company believes its actual exposure to be.

It is important in getting a satisfactory reinsurance quotation to provide the reinsurer with complete information with the first submission of the proposal. Once a reinsurance quotation has been made, it is difficult to secure an improvement in the terms. When the submission is in connection with an individual assured or property, the reinsurer needs all the information the originating company found necessary for its own rating and underwriting unless there is some prior arrangement whereby the reinsurer has agreed to follow the underwriting of the originating company.

If the negotiations involve a treaty or contract, the reinsurer needs to know the underwriting practices of the originating company, the types of business that will be written, the territories in which assureds will be solicited, the rating methods that will be used, and the experience of the company in those fields of insurance. Under no circumstances should an underwriter consider withholding any information that would influence a reinsurer. This may be interpreted as bad faith on the part of the originating company, and it would have an adverse effect on any later negotiations.

The methods and placing of reinsurance can have a considerable effect on the unearned premium reserve of the originating company. Some states have laws prohibiting a company from taking credit in its reserves for reinsurance placed in companies not authorized to do business in the state where the property is located. "Excess of loss" reinsurance and catastrophe reinsurance in most cases apply to the entire business of the company rather than to any particular policy, and usually no credit for such reinsurance is taken in the unearned premium reserve.

When a company finds it desirable to lower its unearned premium reserve by means of reinsurance, the inland marine reinsurance needs to be placed on a pro-rata basis. The need for this is felt on policies that are written for terms in advance. Such treatment will not be so necessary in connection with motor truck cargo and other policies that are written on a gross receipts basis. The premium on these policies is earned when it is received by the company, and it is not necessary to set up any unearned premium reserve against it. When the factor of unearned premium reserve must be taken into account, it will be well to consider splitting the reinsurance. Those policies that do not require the setting up of any unearned premium reserve might be reinsured separately from the ones written with an advance premium payment.

Questions

1. Upon what theory does an insurance company base its estimate of the losses to be expected in a given period of time?
2. What are the functions of reinsurance?
3. Of what advantage is reinsurance to policyholders?
4. How does treaty reinsurance differ from facultative reinsurance?
5. Distinguish between catastrophe reinsurance and "excess of loss" reinsurance.
6. Why is the utmost good faith necessary between an insurance company and its reinsurer?
7. Name the principal types of reinsurers.
8. What are several inland marine coverages that may produce catastrophic losses for insurance companies?
9. What special problems are there in placing reinsurance for inland marine policies?
10. What steps can an inland marine underwriter take to ease the placing of reinsurance?

CHAPTER XXI

Adjustment of Inland Marine Losses

INLAND MARINE LOSS ADJUSTMENTS are more complicated in many ways than the adjustment of other property loss or damage claims. The adjuster of a fire or extended coverage claim can tell at a glance that a loss has occurred, for a fire, windstorm, or explosion leaves plenty of evidence that there is damage. The assured who has had a fire loss usually is known where the property is located, and his reputation can be checked with neighbors or business associates. Ownership, title, interest, and values of property at a fixed location can be determined from known sources. The work of proving the interest of the assured and the value of the property damaged by fire may be a considerable task, but the procedure follows a well-established routine.

In contrast, when an inland marine claim is presented, it may not be evident immediately that a loss has occurred. The assured may report that valuable jewelry has been lost or stolen, and the first task of the adjuster is to make certain (1) that the assured actually had the property that is claimed to be lost, and (2) that it is gone and not merely mislaid.

Inland marine insurance basically is the insuring of property in the course of transportation, and a loss may occur a long distance from where the assured's reputation, ownership, and interest can be checked. Inland marine insurance frequently ceases to cover when the property no longer is in a state of transportation, and the inland marine adjuster must determine whether the property is covered by the policy at the time of the loss. This chapter is not intended as a general treatise on the adjustment of property losses, but points out the many ways in which the handling of inland marine claims differs from the adjusting of other types of property damage losses.

Determining Whether a Loss Has Occurred

The investigation first must determine that the property did exist and that its loss or damage took place. When there is no

tangible evidence that there was such property, the adjuster should inquire from the assured and from other persons regarding the exact nature of the property, when it was last seen, and the likely causes of disappearance. Vague answers may indicate that a detailed investigation should be made of the circumstances of the loss.

An example will illustrate the necessity for careful inquiry. An insurance company received a report of the disappearance of a fur coat that was insured under a personal fur policy. The assured could not give much information except that the coat had disappeared, apparently from the home. After a few weeks, the company decided to pay the claim, inasmuch as the reputation of the assured was unquestioned and there was no evidence of dishonesty.

About a year and a half later, the assured called up and told the insurance company that the coat had been located. A furrier had telephoned and asked when the assured's wife intended to call for her coat, which had been in storage a year and a half. It developed that the assured's wife had told her maid to send the coat to storage and had forgotten about it. The adjuster had taken the word of the assured and his wife that the maid was thoroughly reliable (as in fact she was) and had not made any inquiry of the maid herself. Had he questioned the maid, undoubtedly he would have located the coat and determined that no loss had occurred.

The adjuster next must determine whether the loss has occurred under circumstances covered by the policy. In the case of clothing and personal effects, the coverage usually applies to all situations, but in the case of property insured under transit policies, the coverage ceases at some point. The policy must be examined to see when the coverage ceases, and then the actual circumstances of the shipment must be determined. Transportation policies frequently cease to cover upon delivery to the consignee. It may be necessary to examine the records of the transportation company to see whether delivery had been made before the loss occurred.

An example of a careful investigation is one that was made of a loss under a legal liability policy on household furniture being transported by a furniture warehouseman. The policy covered the legal liability of the warehouseman while the goods were being hauled in his trucks and also during the presence of the property in his warehouse incidental to transportation for a period of not more than thirty days.

The warehouse burned down and there were dozens of claims under the policy. The adjuster examined each claim to determine (1) whether the property had been in the warehouse more than thirty days, and (2) whether the goods were in the warehouse temporarily pending their being moved on to another location or had been placed there in storage.

One load of goods that had been in the warehouse less than thirty days was to be shipped to another city and was being held for the convenience of the warehouseman while he located another load to go in the same direction. There was no doubt that this load was in the course of transportation and its presence in the warehouse was incidental to transportation.

Another load had been placed in the warehouse on the instructions of the owner, who had said that he expected to be traveling for several months before he located a place to live and would send word to the warehouseman when he wanted the goods. It was decided by the adjuster and the insurance company (and agreed to by the assured) that this load of goods was placed in storage and that its presence in the warehouse was not incidental to transportation.

The loss must be the result of a peril insured against by the policy. A common misapprehension is the idea that the words "inland marine" are synonymous with "all risks" or "all loss." This is not the case; a careful adjuster consults the policy to see just what perils are enumerated and then determines whether the loss has been caused by one of the perils named.

Ownership or interest has to be checked, and usually the adjuster can locate documents that will prove interest and title. Difficulty may be encountered in connection with shipments when the loss occurs at about the time title passes from the shipper to the consignee. In one case, some merchandise was to be shipped F.O.B. the shipper's factory, and the goods had been placed on the factory shipping platform for pickup by the carrier. Apparently the goods were stolen during or about the time the pickup was to be made. The shipper claimed that the title had passed to the consignee when the goods were placed on the platform. The consignee and his insurer argued that the title never had passed, since the carrier was able to prove that the goods had not been turned over to him. The shipper finally agreed and there was no court determination of the question, but the settlement seems reasonable.

A loss under a legal liability policy, such as a motor truck cargo policy, is investigated to make certain that the assured is liable for the loss. There may be interline agreements between truck lines that would affect the liability of the assured. Occasionally there is a loss for which the assured is not liable (such as a loss caused by an "act of God"). When the policy insures the liability of the assured as a bailee (not a bailees' customers policy), the adjuster examines the possible liability of the assured carefully, because a bailee ordinarily is liable only if it can be proved that he was negligent in connection with the loss.

Occasionally an adjuster suspects that a claim is fictitious or that a part of the story is being held back in order to support the claim. The adjuster usually considers it unwise to reveal his suspicions to the assured, but it may be advisable to withhold settlement temporarily while a thorough investigation is made. All the witnesses are queried, and it may be desirable to question the assured and witnesses under oath. People who are willing to lie for the sake of collecting from an insurance company, or to help a friend or employer collect, may be afraid to lie under oath.

A type of fictitious claim encountered at times is the reported loss or theft of jewelry that actually has not been lost but has been pawned or given away. In one case reported by an insurance company, an assured came home intoxicated one night and, having lost his wallet, gave a $500 diamond ring to the cab driver for his fare. About two months later he reported that he had lost the ring. Searching inquiry by the adjuster revealed that the assured's story was vague, and the adjuster learned from neighbors that the assured occasionally went on drinking bouts. The ring was located in a pawn shop, and fortunately the pawnbroker knew the cab driver who had pawned it. The entire story came out and the company did not pay any claim.

Whenever an adjuster is suspicious of a claim, he secures the assured's past claim record and compares the present claim with the past record. If there appears to be a pattern of claims, or if the articles lost are similar, such facts may lead the adjuster to a solution of any question concerning the claim. The assured is obligated under the policy provisions to prove his loss. When the claim is legitimate, the assured usually can supply supporting evidence concerning the circumstances of the loss.

Subrogation

Perhaps the greatest difference between inland marine loss adjustments and those in connection with other property insurance policies is that a large proportion of inland marine claims offer chances of recovery through subrogation. Property in transit frequently is in the custody of a common carrier or a bailee who has some degree of responsibility for the safe delivery of the property.

The adjuster by experience learns to know the liability of common carriers for the safe delivery of property and how to protect the interests of the assured and the insurance company. Delaying tactics on the part of a common carrier in handling a claim may be carried out in the hope that the claimant will fail to file a claim or suit until after the time limit has passed.

One of the first tasks of an adjuster is to make certain that a written notice of claim has been filed against a common carrier who may have been responsible for a loss. The claim must be followed up and suit filed within the time limit if the company and assured decide to pursue the claim in court. Negotiations for settlement by the carrier cannot be depended upon as a waiver of the time limits for filing claim or suit.

The liability of a bailee is not so extensive as that of a common carrier, but the adjuster must pursue any possible liability to its limit when there is a possibility that a bailee has been negligent in handling the assured's property.

If the assured has collected his loss from a bailee or other third party, he may not collect it again from the insurance company. Many policies have a clause which provides specifically that the assured cannot collect under the policy if he has collected from others.

Bailees and common carriers frequently attempt to take advantage of the insurance purchased by the assured. The uniform straight bill of lading provides:

> Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

Most inland marine insurance policies provide that:

> This insurance shall in no wise inure directly or indirectly to the benefit of any carrier or other bailee.

These two provisions are in direct conflict. The bill of lading provision means that if the assured collects the amount of his loss from an insurance company, the carrier does not have to pay the claim. The insurance policy, on the contrary, provides that if the carrier is relieved from his obligation by the existence of the insurance, the insurance company pays nothing. Contracts with other carriers and bailees are likely to contain clauses similar to that quoted from the uniform bill of lading. The adjuster secures copies of all such contracts before suggesting payment under the insurance policies. Payment of the loss in the face of such a bill of lading provision might stop any recovery from the carrier by the insurance company under its rights of subrogation.

Use of a loan receipt. A loan receipt must be used in all cases when there is such a conflict between the insurance policy conditions and the carrier or bailee contract. In this situation, the proper procedure is for the insurance company to lend the amount of the loss to the assured, under the condition that the loan will be repaid only if the loss is recovered from the carrier or bailee.

Suit then is entered against the carrier or bailee in the name of the assured. If he recovers the loss from the carrier or bailee, he repays the loan to the insurance company. If he does not recover, he is under no obligation to repay the insurance company. This seems like an involved way of handling the conflict, but it has been held by the courts that such a loan is not payment of the insurance such as to give the carrier the benefit of the insurance.[1]

It is important that the adjuster secure a written loan receipt. It might be possible to prove that the payment was intended only as a loan even in the absence of a formal receipt, but it is much safer to have all the conditions in writing so that the bailee or carrier cannot contend that the insurance payment was a payment of the loss rather than a loan.

Collection of baggage losses. The adjuster may have occasion to adjust losses under personal property policies when the losses have occurred to baggage in the hands of common carriers. The liability of a common carrier for the safe transportation of baggage is almost absolute and is comparable to other common carrier liability. When baggage has been delivered to a carrier, the owner has no further responsibility for it until it is delivered back to him. The contractual relationship between the owner and the carrier may

[1] Luckenbach v. McCahan Sugar Ref. Co., 248 U. S. 139, 63 L. ed. 170 (1918).

limit the recovery, but ordinarily a common carrier cannot entirely relieve itself of liability.

In order to present a valid claim against a common carrier for loss of baggage, it is necessary for the adjuster to determine that the property falls within the definition of baggage that appears in the tariffs filed by the carrier. This definition usually includes clothing and other belongings a traveler would be likely to carry. The samples carried by a salesman are not considered baggage unless the tariff so states.

The adjuster cannot assume that statements on baggage receipts always are valid as a contract between the passenger and the carrier. These statements may prove to be in the nature of a notice to the passenger and not a contract. Occasionally such notice is proved to be invalid by circumstances connected with the shipment.

The tariffs filed by common carriers usually specify limits of liability for baggage shipments. The passenger is assumed to have had notice of these limitations even though he has not seen them, because the filings are public information and are available to anyone.

Subrogation against landlords or other negligent parties. During the past few years there have been an increasing number of cases in which courts have held a person or corporation liable for property damage resulting from fire or bad plumbing, or some other act of neglect. The spread of fire from a building where flammable materials were stored in violation of a state statute was held to be the result of negligence.[2] A landlord has been held responsible for loss due to the freezing of plumbing when he did not supply sufficient heat over a week-end to prevent freezing.[3] It is important that the insurance company be notified at once if there are possibilities of subrogation, so that the proper investigations can be made and counsel can be retained if advisable.

Impairment of subrogation right. Inland marine policies may contain a clause that is intended to invalidate the policy if the assured has entered into any agreement with a carrier or bailee that would remove or limit the assured's right of recovery against the carrier or bailee. Examples of agreements that come within the in-

[2] Newburgh Transfer and Storage Co. v. Pure Oil Co., 259 App. Div. 910, 20 N. Y. S. (2d) 141 (1940).

[3] Par-X Uniform Serv. Corp. v. Emigrant Industrial Savings Bank, 268 App. Div. 699, 53 N. Y. S. (2d) 16 (1945).

tent of such a clause are the settling of a loss without the consent of the insurance company and the acceptance of a contract or bill of lading that limits the amount of recovery. The uniform express receipt limits recovery to $50 per shipment or fifty cents per pound for shipments of more than 100 pounds. The acceptance of this receipt impairs the assured's right of recovery and consequently impairs the insurance company's right of recovery under subrogation. Under a strict interpretation of such a clause, the acceptance of the uniform express receipt would avoid the policy.

A more recently developed clause for inland marine policies is one that gives permission for the assured to accept the ordinary bills of lading or carriers' receipts but is intended to invalidate the coverage if the assured enters into any special agreement that would impair the right of recovery against a third party.

The adjuster may find some clause in the policy referring to impairment of right of recovery, and he may find that the assured has accepted a receipt in violation of the clause. It is standard practice for the adjuster to ascertain all the facts in such a case and to communicate with the insurance company before settling the claim. Many companies are liberal in the interpretation of such clauses when the receipt is an ordinary bill of lading or express receipt, but adjusters usually determine the insurance company's attitude before proceeding with a settlement.

Recovery and Salvage

Inland marine claims differ from fire and other property loss claims in that the property frequently is not destroyed but is lost or stolen. There may be a substantial chance of recovery. Adjusters find it advantageous to maintain contacts with police departments and particularly with the pawnshop details of city police forces. Many jewelry losses are reduced by recovery from pawnshops. The obvious place for a small-time thief to dispose of his loot is through a pawnshop, although a well-organized gang is likely to have arrangements whereby jewelry can be changed in appearance before it is passed into the trade or into a pawnshop through a "fence."

Detailed descriptions of all articles are secured, and the police are advised of the loss at once. Many times recovery efforts have been thwarted because neither the adjuster nor the assured could identify the articles.

Salvage operations are important in any loss involving damaged property. Many jewels, and particularly diamonds, are resistant to fire and are likely to be merely charred on the outside. If a substantial amount of jewelry is involved in a fire loss, it often is worth while to sift the ashes to recover the jewels. Frequently jewels can be recut and a considerable reduction made in the loss.

Immediate action is necessary in connection with a motor truck collision or overturn if the cargo is partially damaged. A guard should be posted and the merchandise removed to a safe location. Passers-by and neighbors often feel that the contents of a wrecked truck are their legitimate prey unless there is a representative of the owner at hand. In his first contact with the assured, the adjuster takes care to point out the assured's obligation under the "sue and labor" clause to assist in salvage operations. Many policyholders do not understand this requirement and they may try to offer abandonment to the insurance company.

The salvage of foodstuffs may involve conferences with health authorities. It is understandable that a health officer may condemn a load of canned goods or oranges if he sees it as a complete mess with half the load smashed to bits. It is essential to get the undamaged portions of the load out of the wreck where they can be examined, without the authorities' having to paw through a mess of obviously unfit merchandise. Rapid handling and the immediate use of local refrigeration services help to convince authorities that the adjuster and owner are working to protect the health of the community and that no attempt is being made to salvage food that is unfit for human consumption.

Losses in fur storage warehouses, laundries, and other places where clothing is damaged call for immediate salvage operations to get the clothing cleaned and dried as rapidly as possible. After stains and mildew have accumulated, as they will within a few hours, it may be impossible to clean the clothing sufficiently to have it accepted by the owners.

Determination of Loss and Sound Value

An inland marine policy may or may not include specific provisions setting out the method for ascertaining the value and loss. The scheduled property floater policy, which frequently is used as a basic inland marine policy, contains an actual cash value clause. In the absence of any modifying clause in the form attached to the

policy, the adjuster follows usual practices, such as are common in connection with fire adjustments, in order to determine the value and the loss.

Policies on fine arts, antiques, and perhaps other personal property scheduled on a policy may have an agreed value that is to be paid in case of loss. Ordinarily these amounts are paid without question unless the adjuster has reason to believe that there is evidence of fraud. Fraud is a rare occurrence, but its possibility cannot be ignored.

Inland marine policies covering commercial property, and particularly property in transit, are likely to contain a clause setting forth the method of determining the value. This may be the invoice value at time and place of shipment, the invoice value at time and place of delivery, or the invoice value plus certain freight or carriage charges. Since there is no uniformity, the adjuster examines the pertinent clause and applies it according to the circumstances of the loss.

Coinsurance

There is seldom a coinsurance clause on policies covering household goods and personal effects, but such clauses are used frequently on policies covering commercial property. Many motor truck cargo policies contain clauses which provide that the company shall not be liable for a greater proportion of any loss than the amount of insurance bears to the value of the goods on the truck at the time of the loss. This is equivalent to a 100 per cent coinsurance clause.

There may be a difference over whether the coinsurance applies to the value of the cargo or to the assured's liability. A contract carrier may limit his liability by contract and the coinsurance may apply to that amount rather than to the total value. There is no uniformity in the practices of the inland marine insurance companies; the adjuster handles losses under each clause as he finds it.

Other Insurance

The problem of other insurance is one of the most troublesome of all adjustment problems in connection with inland marine losses. This arises because the property that is the subject of insurance is likely to be in the custody of someone other than the owner. The owner may have his insurance to protect himself from loss, and a

bailee or carrier may have insurance to protect him from loss due to his legal liability. Occasionally there is more than one bailee involved in a loss because the original bailee may have found it necessary to send the goods to another bailee for some special process. Frequently an owner, a bailee, and a carrier are involved in a loss, each with his own insurance.

Inland marine underwriters often insert clauses in policies that are intended to avoid the coverage if there is any other insurance covering the assured's interest. This follows the principle that an insurance company has the right to know about all insurance covering the interest of the assured, because overinsurance may tempt the assured to bring about a loss.

It has been held that there is no other insurance within the meaning of such a clause if the policies cover different interests.[4] The owner of property had insurance to protect himself against loss of the merchandise, and a bailee had insurance to protect himself against loss due to his legal liability for damage while the property was in his custody. The insurance on the property for the protection of the owner had been set up as a defense by the insurer of the bailee. The court held that the policies covered different interests and there was no other insurance within the meaning of the policies.

Another type of "other insurance" clause is intended to make a policy excess over all other policies that may cover interests in the property. The situation frequently arises when there are several policies covering interests in the same property and all the policies have clauses stating that each policy is excess insurance over all other policies involving the property.

Some policy has to become primary insurance; otherwise it would be useless to carry insurance on property that may be in the custody of others. A general rule has come to be applied that specific insurance is primary and pays ahead of any blanket or floating insurance.[5] For example, a person might have a policy that specifically describes and insures a diamond ring. The ring might be in the custody of a jeweler who has an insurance policy to protect the property of his customers while such property is in his possession. If a loss occurs under circumstances that absolve the jeweler as a bailee from responsibility for the loss, the question would arise

[4] Oakley v. Firemen's Insurance Co., 70 N. Y. S. (2d) 458 (1947).
[5] Fairchild v. Liverpool and London Fire and Life Ins. Co., 51 N. Y. 65 (1872).

which insurance policy is liable for the loss. The policy that describes the ring specifically would pay, since it covers the value of that particular piece of property, whereas the jeweler's policy provides blanket coverage on any property that might be in his possession.

Occasionally there are several policies all of which are floating or blanket and none of which describe the property specifically. In a New York case the Appellate Division, First Department, placed the payment of the loss on the policy it considered to be "more specific" than the other policies; that is, the policy that came the closest to describing the property and the circumstances of the loss. This decision, however, was reversed by the Court of Appeals of New York, which laid down the rule that when all of several policies are intended to be excess policies and there is no primary policy, they all should be compelled to contribute. The Court of Appeals further commented that such a rule would lead to prompt payment of a loss and elimination of litigation.[6]

The payment of a loss under a specific policy issued to an assured is a separate matter from the possible collection of the loss from a bailee if he is responsible for the loss. Even though a bailee's insurance is less specific, it still may be necessary for the bailee to pay the loss if it can be proved that the bailee was negligent and the bailee's policy insures him against loss due to his legal liability. This, however, is subsequent to the original determination of which policy pays and which is other insurance.

"Agreements of Guiding Principles"

The problem of adjusting insurance losses involving conflicting "other insurance" clauses came to public attention in connection with laundry fires during the early 1940's. Fire insurance policies covering household furniture had been extended so that ten per cent of the coverage could be applied to property off the premises named in the policy. Insurance companies that had issued bailees' customers policies to laundries and were presented with claims for fire losses contended that the fire insurance policies of the owners were more specific coverage than the bailees' customers policies. They advised their laundry assureds to tell their customers to put

[6] Davis Yarn Co. v. Brooklyn Yarn Dye Co., 293 N. Y. 236, 56 N. E. (2d) 564 (1944).

in claims with their fire insurance companies under the ten per cent extension of the household fire policy.

There also had been several cases involving mercantile or commercial policyholders in which conflicting clauses had had to be interpreted by the courts because there was no satisfactory way that the insurance companies could agree about which company was liable for the loss. Sometimes policyholders were left to wait for their payments while the insurance companies wrangled over the liability.

It was obviously unfair to policyholders to make them wait for their loss payments when the only question involved was which insurance company was to pay the claim. It also was becoming increasingly clear that these arguments between companies were having an unfavorable effect upon the public when they resulted in delay of payment.

Executives of leading insurance companies decided that many of the disputes could be settled in advance if the companies were to agree on certain principles to be followed when there was overlapping coverage between two or more insurance policies. After many conferences between all sections of the insurance industry, there were developed several inter-company agreements known as the "agreements of guiding principles."

There are three such intercompany agreements that may affect the settlement of inland marine claims. There is an "Inland-Inland" agreement, which applies when there are two or more inland marine policies covering property affected by the loss. A "Fire-Inland Marine" agreement is applicable when there are fire and inland marine policies applying to the claim. The third agreement relates to overlapping coverage between casualty and inland marine policies and is known as the "National Bureau and IMUA" agreement. This refers to the National Bureau of Casualty Underwriters and the Inland Marine Underwriters Association. These agreements have been signed by most of the leading insurance companies, both stock and mutual.

These agreements are effective only when they have been signed by both of the companies involved in a claim. If one or both companies involved have not signed the agreement that would apply to a loss, the agreement has no effect and the liability of the companies must be settled in the same way that all such claims were settled before the agreements were drawn up. The claim would

have to be settled by negotiation and, failing that, by resort to the courts.

It is important that insurance company departments that handle loss matters, and the adjusters, maintain complete and up-to-date lists of these signatory companies so that they can determine immediately whether an "other insurance" problem is to be handled in accordance with the applicable "agreement of guiding principles" or whether they must resort to general practices outside the agreements.

The texts of the agreements, which are largely self-explanatory, are reproduced in full in Appendix D. Therefore, only the basic principles are covered here in order that the agreements may be understood clearly.

The "Inland-Inland" agreement is based on the principle, first, that a carrier or bailee is responsible for property in his custody; and second, that specific insurance shall be considered primary insurance before any floater coverage. Therefore, any insurance issued to a carrier or bailee pays its limit of liability before a policy issued to the bailor is expected to contribute to the loss payment. A policy specifically describing the property pays its limit before a policy that provides floater coverage or that covers in general terms is expected to pay except when the floater policy is issued to a carrier or bailee.

The "Fire-Inland Marine" agreement follows the same principles as the "Inland-Inland" agreement concerning specific insurance and bailees' insurance, and adds a third idea—that a policy specifying location is primary insurance ahead of insurance that is of a floating nature.

The "Fire-Inland Marine" agreement largely resolved the trouble that had been experienced in connection with laundry fire losses. Under the agreement a bailees' customers policy is considered the primary insurance and pays first, up to its limit, before the ten per cent extension of the bailor's household fire insurance policy is called upon to contribute. If the bailees' customers policy is exhausted before the loss is paid in full, the household fire policies of the bailors would be called upon to pay up to the limit of the off-premises coverage.

Sometimes it occurs that some customers of a laundry have household fire insurance policies and others do not. In such cases the bailees' customers policy is made to apply first to the property

of those bailors who have no insurance of their own. Next, the bailees' customers policy applies to the property of the bailors who have insurance of their own. Finally, the fire coverage of the bailors comes in to pay the remainder of their losses if the bailees' customers policy has been exhausted before all claims have been paid.

The "National Bureau and IMUA" (casualty-inland marine) agreement consists of two principles only. The first principle applies to problems involving the casualty policy known as a "residence and outside theft" policy and the inland marine forms known as the personal effects floater and tourist baggage forms. The methods of determining which is primary insurance follow those already described for the other two agreements.

The second principle sets out the method of apportioning a loss between the two policies when both cover the property. Briefly, this provides that the limits of liability of the policies shall be added together and the loss apportioned according to the amount of liability under each policy.

All the agreements provide that they shall not affect the right of action accruing under subrogation against a bailee except as such action might be in conflict with the purpose of the agreement. Neither do the agreements rewrite policies or make liability where none exists, nor do they increase the extent of the liability to the policyholder under the policies as written. The purpose of the agreements is to disregard the "other insurance" clauses in the policies and to apply the policies on an equitable and reciprocal basis, depending on the nature of the liability assumed by each underwriter.

The "agreements of guiding principles" do change application of the policies as between signatory companies, and the applicable principle takes precedence over the terms of the policies. The agreements have helped to eliminate confusion on the part of policyholders and have facilitated the payment of losses. There has been a lessening of embarrassment to policyholders as a result of disputes between insurance companies, and this is the objective of these agreements.

Reporting and Proof of Loss

Inland marine insurance policies contain certain requirements the assured must meet in case there is a loss under the policy. The provision of the scheduled property floater policy (which is the

basic policy used for the personal property floater) is typical and reads:

> The assured shall as soon as practicable report to this company or its agent every loss or damage which may become a claim under this policy and shall also file with the company or its agent within ninety (90) days from date of loss a detailed sworn proof of loss. Failure by the assured to report the said loss or damage and to file such sworn proof of loss as hereinbefore provided shall invalidate any claim under this policy for such loss.

The words "as soon as practicable" are used in place of the word "immediate," which formerly was used generally. In practice the clause means that notice must be given within a reasonable time. Delays of as long as sixty days have been held as not unreasonable when the court felt that there was adequate reason why the assured could not have reported the loss any sooner.[7] An insurance policy may require written notice of loss. An oral notice is not sufficient when a written notice is specified.

The clause provides that the assured shall give notice of "every loss or damage which may become a claim under this policy." The assured may not wait until he is certain that the loss will result in a claim under the policy but must give notice as soon as the loss occurs.[8]

The requirement for immediate notice of loss is reasonable because the insurance company deserves the opportunity to investigate the loss and also should have an opportunity to attempt salvage and to prevent futher loss, if that is possible. Unnecessary delay on the part of the assured in reporting the loss may hamper the company sufficiently to increase the loss.

The assured also is required to file with the insurance company a sworn statement in proof of his loss. It is not the responsibility of the company to establish the amount of loss or damage. This is a responsibility of the assured. Most insurance companies supply forms that the assured may fill out with the pertinent information, but the policy terms do not require the use of any particular form.

The time limit for the filing of proofs of loss varies in different policies; time limits frequently used in inland marine policies are thirty, sixty, and ninety days. There is a long list of conflicting

[7] Will & Baumer Co. v. Rochester German Ins. Co., 140 App. Div. 691, 125 N. Y. S. 606 (1910).

[8] Travelers' Ins. Co. v. Myers, 62 Oh. St. 529, 57 N. E. 458 (1900).

court decisions on the validity of the time limit for the filing of proofs of loss. In order to be safe, the assured should be certain to file the proofs of loss within the time limit provided in the policy, even if there is reason to believe that the company will not enforce the provision.

The policy also contains a provision regarding payment of loss by the insurance company. In the scheduled property floater policy it is provided that:

All adjusted claims shall be paid or made good to the assured within sixty (60) days after presentation and acceptance of satisfactory proof of interest and loss at the office of this company.

Although the term may vary, a thirty-day payment provision is found in many inland marine policies. This time interval is given to the company in order that it may investigate and check the claim. Since the contract does not require payment before the time specified, a suit against the company would not be effective until after the time interval had expired without payment by the company.

Most policies require that any suit under the policy must be commenced within twelve months after the occurrence of a loss. However, this provision is modified in those states that permit a longer interval. In a few states the interval permitted by law within which suit may be filed is as long as five years.

Documents Other than Notice and Proof of Loss

In the adjustment of most inland marine claims, the adjuster works closely with the assured and helps in the preparation of the proof of loss. There are several documents that may be necessary for the proper presentation of the claim and that may not be considered strictly a part of the formal proof of loss. This is true especially when the policy covers the legal liability of the assured for loss or damage to the property of others. It is necessary to present proof of the liability of the assured as well as proof of the amount of the loss. In the case of a policy covering property belonging to the assured but in the custody of others, the adjuster must secure proof of what happened to the property and must include all the documents so that the company can proceed against the carrier or bailee who was responsible for the loss.

The motor truck cargo claim is a good example of the type of

claim in which the policy covers the legal liability of the assured. The adjuster must secure (1) copies of the receipt or bill of lading issued by the trucker, including the description of the property, (2) an affidavit by the consignee that he did not receive the goods (unless the loss is such that the assured knows that there was loss or damage, as in the case of a collision or fire), (3) copies of invoices or other documents to prove the value, and (4) a copy of the owner's claim on the trucker.

Statements of drivers or others familiar with the circumstances of the loss should be secured as soon as possible after the loss. The employees of many trucking companies change frequently, and it may be difficult to locate drivers, dockmen, and clerks if there is delay in getting the desired statements.

When the loss involves property in the custody of a carrier or bailee, the adjuster secures copies of the bills of lading or receipts, the letter making claim on the bailee, affidavits or other evidence that the goods shipped were those described in the invoices, and statements from all parties who may have knowledge of the circumstances of the loss.

Waiver and Estoppel

Either party to a contract may waive provisions that are in his favor. The inland marine insurance policy contains a clause relating specifically to waiver of policy provisions. This usually provides that no officer, agent, or other representative of the company may waive any provision of the policy unless the waiver is written and is attached to the policy. When the company intends to waive some provision and the waiver is endorsed on the policy, there is no question regarding the fact that the provision is waived as stated in the written endorsement.

In spite of the clause in the policy stating that no waiver shall be effective unless written and attached to the policy, in many cases courts have held that the acts of the insurance company have acted as a waiver of certain requirements affecting the assured. For example, the requirement that the assured must file a proof of loss within a specified time has been held to have been waived by a denial of liability on the part of the insurance company.[9] When it is held that the company has waived a requirement, the

[9] Cooper v. Ins. Co. of the State of Penna., 96 Wis. 362, 71 N. W. 606 (1897).

company is estopped (prohibited) from setting up the requirement as a bar to recovery under the policy. That is, if the company has waived the requirement for filing a proof of loss, the fact that none was filed cannot be used by the company as a defense against recovery.

It is important for the adjuster and the agent to follow carefully all the policy requirements after a loss has occurred, especially if there is any reason to believe that the company may have reason to deny liability. Sometimes it is desirable to secure a nonwaiver agreement. This is an agreement between the assured and the company that neither party waives any of its rights under the policy by acts in connection with a loss. This agreement permits the company to make its investigation without waiving the requirements to which the assured normally is subject. It permits the assured to proceed with salvage and other activities without waiving any of his rights against the company.

Adjusters' Reports

The reports of the adjuster to the insurance company are extremely important documents to the underwriter. Future underwriting of the assured and the property may be guided to a large extent by the information uncovered by the adjuster. If the assured was coöperative and honest in every detail, the underwriter usually judges that the assured may be granted the broad coverage possible under inland marine policies.

There may be cases when the assured shows a tendency to inflate claims beyond their actual value, or the adjuster may uncover dishonest acts of the assured. Inland marine insurance depends for a favorable experience upon the honesty of the assured, and the information uncovered during a loss investigation should be studied by the underwriter with a view to future commitments. The adjuster is under a strong obligation to report all the facts he is able to uncover regarding the loss and the assured's responsibilities in connection with it. In the same manner, the assured can judge the fairness and reliability of a company by observing how losses are adjusted and paid.

The Adjuster as the Company Representative

The adjuster is the representative of the insurance company who delivers what the assured purchased. The agent may be entirely

satisfactory to the assured in selling the policy, but unless the adjuster delivers what the assured thinks he bought, the company has a dissatisfied customer. Adjusting losses is primarily a problem in human relations, and the adjuster has to be an expert in making friends and influencing people. When the assured has confidence in the integrity of the adjuster, he will coöperate and the company will have a booster. The ideal adjuster must be primarily a salesman, because it is his job to sell the assured on himself and his company, and then to sell him on the fair settlement the good adjuster always works out for the company's assureds.

Questions

1. In what ways can an inland marine loss adjustment be more complicated than a fire loss adjustment?
2. What steps should an adjuster take to determine whether a loss has occurred under the terms of an inland marine policy?
3. What are the obligations of an adjuster in connection with a loss that occurred while the property was in the custody of a common carrier?
4. What is the purpose of a loan receipt in connection with loss of property in the custody of a bailee or common carrier?
5. What impairments of subrogation rights might an adjuster find in connection with a loss under an inland marine policy?
6. Why are salvage operations an important part of many inland marine loss adjustments?
7. What circumstances brought about the signing of the "agreements of guiding principles" for adjustment of losses?
8. What principles are followed in the "agreements of guiding principles" in the adjustment of losses under policies having conflicting "other insurance" clauses?
9. What are the obligations of the assured in case of loss?
10. List the documents that an adjuster usually presents to the insurance company in connection with the settlement of a claim involving common carrier liability.

CHAPTER XXII

Governmental Regulation of Inland Marine Insurance

Limited Regulation of Inland Marine Practices

The insurance business has been subject to regulation by state insurance departments for many years. This regulation has had several purposes, important among which have been:

1. Supervision of financial operations to avoid, as far as possible, insolvency of insurance companies;
2. Collection of revenue for state governments;
3. Protection of the policyholders from unfair and discriminatory practices;
4. Supervision of rates to see (1) that the rates are not too high for the public, (2) that they are not so low that they threaten company solvency, and (3) that the rates are not unfairly discriminatory as between policyholders.
5. Supervision of policy coverages so that the policyholders will get a reasonable protection for the premium paid.

The inland marine departments of the insurance companies have been subject to less regulation of rates and coverages than many other parts of the insurance business. Whereas the rates and forms of coverage for fire, automobile, and workmen's compensation insurance have been subject to approval by many state insurance departments since the early 1900's, the rates and forms for inland marine coverages were quoted individually by the companies until about 1930.

From 1930 until about 1945, a portion of the inland marine business was operated on an individual company quotation basis, but a considerable portion of the business came to be regulated to a degree by company-operated bureaus. There was comparatively little state regulation of inland marine rates or coverages.

There were two principal reasons why the companies were allowed a free hand in the making of inland marine rates.

The first reason was that property insured under inland marine policies primarily was property in transit and the hazards to the property varied greatly from one shipment to another. Rates were quoted by each underwriter according to his judgment of the hazards involved and his company's loss experience with similar properties on comparable journeys. There were thousands of towns and cities between which the property might be in transit, and different common carriers exercised varying degrees of care in the handling of goods in their custody. It was seldom that any two policies covered property under identical or closely similar circumstances.

A second reason for the comparative freedom from regulation of inland marine rates was the fact that inland marine insurance was a relatively minor line of insurance. It was overshadowed by other types of coverage that produced far more premium income. Inland marine rates were not a problem for a majority of the people who purchased insurance, and the state insurance departments were kept busy with problems concerning lines of insurance that affected more policyholders.

The "Nation-Wide Definition" was an early form of regulation. It set up certain boundaries within which the inland marine underwriter could operate. (See Chapter III.) The "Nation-Wide Definition" is a combination of state and industry regulation. Much of the policing under the Definition has been done by the Joint Committee on Interpretation and Complaint, which is composed of company organizations, but the Definition also has the approval of the insurance departments of many states as well as the approval of the National Association of Insurance Commissioners.

One of the circumstances that resulted in the establishing of the "Nation-Wide Definition" was the fact that properties occasionally were being insured under inland marine policies at rates less than the fire insurance rates, even though the coverage under the inland marine policies included fire insurance. A few states acted under their fire rate regulatory powers and issued orders intended to prevent an insurance company's issuing a policy that provided fire insurance at a rate less than the fire insurance rate. These actions on the part of a few states constituted rate regulatory action in connection with inland marine rates, but they were only scattered instances. Within the limitations set up in the "Nation-Wide Definition," inland marine underwriters remained almost entirely

free to set up such coverages and rates as they felt justified by the hazards to the property insured.

Industry Regulation

The first widespread regulation of inland marine rates and forms was the industry regulation that followed the setting up of the Inland Marine Underwriters Association on January 1, 1931. A majority of the stock fire insurance companies that were writing inland marine insurance became members of the I.M.U.A., and the Association was instrumental in stabilizing the rates for many inland marine lines. The Mutual Marine Conference was established in 1936 to perform similar functions for mutual fire companies.

The character of inland marine business had been changing during the 1920's, and there was a need for standardization of the rates for many of the newer coverages. Inland marine insurance originally was used to cover many different properties in varying situations, principally in connection with property in transit.

There arose several types of inland marine coverage under which the insured properties were similar and the situations in which they were insured were more nearly uniform. For example, business in the insuring of fur coats and jewelry was rapidly increasing. It began to appear that the hazards to one fur coat were much the same as those to another. Neither was there much observable difference between the hazards to which different collections of personal jewelry were subject. It came to be recognized that such variations in hazards as there might be were not sufficient to justify the expense of having an underwriter calculate a special rate for every fur coat or for every piece of jewelry that was to be insured.

Manual or class rates were set up by the Inland Marine Underwriters Association and by the Mutual Marine Conference to cover personal jewelry and fur policies and other types of inland marine insurance that underwriters agreed could be treated in class groups.

There were several advantages to the setting up of these class or manual rates. There was a saving of expense, because underwriters and agents were able to quote rates without reference to the insurance company main office or to any special rating formula.

It became possible for the first time for insurance companies to determine whether the general rate level was correct for these classes. Statistics had not been of any significance previously be-

cause of the variation in rates for similar properties and hazards. Underwriters decided that other groups of properties might be rated according to schedules.

It has not been feasible to set up class rates for coverages such as furriers' customers, jewelers' block, railroad rolling stock, and garment contractors policies because of (1) the difference in the construction of the buildings in which the property may be located, (2) the difference in the hazards of cities and towns, and (3) the various loss prevention devices that might be installed. It has been possible, however, to prepare schedules that take all these factors into account and to allow debits and credits in a manner similar to the methods used in the rating of buildings for fire insurance. The rating schedules were prepared for several types of property. The Inland Marine Underwriters Association, and later the Mutual Marine Conference, arranged to have the schedules applied by the Association and Conference offices. Underwriters feel that there is a more nearly uniform application of schedules if they are applied in a central office than if they are applied individually by company underwriters. The insurance companies supply the information to the central offices and apply for the rates to be quoted.

This industry regulation of inland marine insurance resulted in a three-part division of inland marine classes.

The first were those classes of coverage for which there were class or manual rates. The member companies of the Inland Marine Underwriters Association and the Mutual Marine Conference were provided with manuals in which the rates and rules were set out, and the members of these organizations followed the manuals with little or no deviation. The manual-rated classes were largely the personal lines of inland marine insurance, such as the personal property floater, the personal fur and jewelry floater, and policies for coverage of stamp collections, fine arts, and personal effects.

The second group consisted of those coverages for which schedules had been developed and on which the Association or Conference office provided rate-making service to its members. The schedule-rated classes consisted principally of jewelers' block, furriers' customers, garment contractors, bridges, and railroad rolling stock coverages.

The manual- and schedule-rated classes comprised about one-half the total inland marine premiums by 1940.

The other half of the inland marine business was still rated by the individual company inland marine underwriters. These were the properties insured while in the course of transportation and the many odd properties and circumstances that did not fall into any uniform group. It long has been the boast of inland marine underwriters that they are able to provide insurance coverage for any property under any circumstance if the owner or bailee needs insurance protection. Even after more than ten years of industry regulation of rates, approximately half of the inland marine business consisted of the coverages and classes on which class or schedule rating was not feasible.

Insurance Not Considered to Be Commerce

References have been made herein to state regulation of insurance rates and other phases of the insurance business. Up to this point no reference has been made to the Federal Government. For many years it had been assumed that the business of insurance was not commerce and consequently that the Federal Government had no regulatory jurisdiction, because any such power would stem from Federal authority over interstate commerce. This assumption was based on a decision of the Supreme Court of the United States handed down many years ago.[1] This decision had upheld the right of the state of Virginia to regulate insurance. Subsequent decisions of the Supreme Court of the United States had followed the idea that the right to regulate insurance lay within the province of the state governments.[2]

Since the Federal Government did not exercise any control over the business of insurance, there was no attempt to apply the antitrust laws to insurance practices. The insurance companies were considered free to set up rating bureaus, which were combinations of companies for the purpose of setting prices (the making of rates). The Federal antitrust laws are based on the principle that any agreement to set prices (even though the agreement may be between only two people) is a combination in restraint of trade.

Other Federal laws prohibit unfair trade practices and the making of price differentials solely on the basis of volume of business. If the selling of a large quantity of goods to one person or company

[1] Paul v. Virginia, 8 Wall. 168, 19 L. ed. 357 (1868).

[2] Hooper v. California, 155 U. S. 648, 39 L. ed. 297 (1895); New York Life Ins. Co. v. Deer Lodge County, 231 U. S. 495, 58 L. ed. 332 (1913).

results in economies, it is permissible to pass those economies on to the purchaser in the form of reduced prices, but it is not permissible to favor a large purchaser with lower prices solely because of the volume of his business.

None of these restrictions was believed to apply to insurance, and there were many practices in this field that were not permissible in other forms of business.

The S. E. U. A. Decision

Officials of the Federal Government were aware of the fact that there were insurance practices which the antitrust laws prohibited in interstate commerce. There were officials who believed that insurance was commerce, and they felt that the antitrust laws should be applied to the insurance business. After a long investigation, criminal prosecution was brought by the United States against the South-Eastern Underwriters Association, its officers and member companies. It was alleged in the indictment that there was a conspiracy to fix prices and monopolize commerce in violation of the Sherman Antitrust Act.

The defense for the South-Eastern Underwriters Association contended that the Federal courts did not have jurisdiction, and they depended on the former decisions of the Supreme Court. The question of Federal jurisdiction was taken to the Supreme Court of the United States. On June 5, 1944, the Supreme Court handed down a decision that had the effect of reversing completely the position of the insurance companies in their interstate operations.[3] For the first time, insurance companies were faced with the problem of having to comply with the same restrictions as other business in respect to combinations in restraint of trade, unfair trade practices, and discrimination in price setting.

The insurance industry was in a dilemma. The antitrust laws were not designed to regulate insurance companies. If these laws were to be so applied, it was hard to see how rating bureaus could continue to exist, because they are price fixing organizations. On the other hand, it was hard to see how property and casualty insurance companies could operate without the benefit of rating bureaus. No one company has a sufficient spread of business to set its own rates. A free and open competition for business would be almost

[3] United States v. South-Eastern Underwriters Association, *et al.*, 322 U. S. 533, 80 L. ed. 1440 (1944).

certain to result in insolvency for some companies, yet the financial stability of all insurance companies is a primary objective of governmental regulation.

The general thought among those in the insurance industry was that the state governments had done a good job of regulating insurance. Insurance officials, generally, felt it would be desirable to continue state regulation rather than to have the Federal Government supplant state control. Another Supreme Court decision appeared to offer a means of accomplishing the retention of state control of the insurance business. The Supreme Court had held the states can regulate interstate commerce in respects in which Congress had not acted.[4] Therefore, plans were formulated to pass rating laws in states that did not already have statutes regulating combinations of companies for the purpose of setting rates.

It was clear that time would be needed to secure the passage of legislation in forty-eight states. The problem was laid before Congress, and it was explained that a continuation of state control appeared desirable but a moratorium in the application of the anti-trust laws would be advisable if the necessary measures were to be passed by the states. The Seventy-ninth Congress passed an act known as Public Law 15, which gave the insurance industry and the states until January 1, 1948, to make the necessary arrangements.

This later was extended to June 30, 1948, upon which date the insurance industry came under the full effect of the Federal anti-trust laws except as their operation was modified by the application of state laws.

During the moratorium, representatives of all branches of the insurance industry and the state regulatory officials conferred many times, and there were submitted to the legislatures of the various states what were known as the "All-Industry" bills for the regulation of insurance. These bills embodied the principle that the states would regulate rates and that the insurance companies would be authorized by the states to set up rating bureaus for the purpose of determining rates. The laws that were passed varied in some particulars but the basic ideas of the "All-Industry" pattern, as they affect inland marine insurance, were carried out in almost all the states.

[4] Parker v. Brown, 317 U. S. 341, 87 L. ed. 315 (1943).

The "All-Industry" Pattern of State Regulation

The pattern of state regulation set up in the "All-Industry" bills is that by which inland marine underwriters must meet the problems of rate regulation. One of the problems recognized by the framers of the legislation was the difficulty of making a statutory definition of inland marine insurance. There are so many variations in the types of property and the circumstances under which it can be insured under an inland marine policy that the wording used in many state laws reads:

> Inland marine insurance shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the commissioner of insurance hereinafter referred to as the commissioner, or as established by general custom of the business, as inland marine insurance.

This statement permits the setting up of definitions or interpretations by the regulatory official when there is no satisfactory statutory definition to fit a particular situation. This is considered preferable to a rigid definition that would be binding on the industry regardless of later developments. The statement gives a flexibility without which the inland marine underwriter might be prevented from providing some desirable service to the public.

The sections of the "All-Industry" bill that concern the rating of inland marine business recognize several needs of the inland marine underwriter.

It is recognized that the companies need to act in concert in the establishing of rates for classes of business that include many properties of a uniform nature. These classes of business are designated as those "which by general custom of the business are rated according to manual or class rates."

The rate regulatory laws provide for the licensing of rating bureaus, which are required to file with the state insurance departments all the manual and class rates to be used by their member and subscriber companies. Thus the companies had the way cleared for them to combine for the fixing of prices (rates) without being in violation of the Federal antitrust laws. They can collect statistics and perform such other functions as are necessary to determine whether the rates are adequate and fair and do not unfairly discriminate between policyholders with approximately the same hazard.

It was necessary for the Inland Marine Underwriters Association and the Mutual Marine Conference to determine their position under the new laws. The stock companies decided to set up a new organization to be known as the Inland Marine Insurance Bureau and to have it become licensed in the states having rate regulatory laws applying to inland marine insurance. The Inland Marine Underwriters Association was divorced from all rate-making activities and became a trade association.

The mutual companies decided to make the Mutual Marine Conference strictly a rate-making organization, and the name was changed to the Transportation Insurance Rating Bureau. These bureaus have become licensed in all the states that regulate inland marine rates, and they file manual and class rates for their members and subscribers.

The new rate regulatory laws also recognized the need for nationwide rating of business if local experience is influenced greatly by nationwide factors. Inland marine underwriters contend that local experience should have only a limited effect on the level of inland marine rates.

The property insured under an inland marine policy usually is either in course of transit between two points or is of a floating nature and may be moved to any part of the country or perhaps to any part of the world. The fur coat insured in Chicago may be lost in New York, and the jewelry insured in Philadelphia may be lost on a train between Seattle and Portland. It is impossible to say whether such a loss should be charged to the state in which the policy was written or to the state in which the loss occurred. The very nature of the inland marine insurance business makes it national in character. The "All-Industry" bills, and the state legislation based upon them, recognized this situation in connection with inland marine insurance by requiring regulatory officials to give consideration to "the past and prospective loss experience . . . both within and without this state . . ." and "to past and prospective expenses both countrywide and those specially applicable to this state. . . ."

In addition to the floating nature of most property insured under an inland marine policy, there is a further reason why local loss experience cannot be given full credibility in the making of inland marine rates. There are fifty or more classes of inland marine

insurance, and the largest amount of premium in any one class, nationwide, is about $40,000,000 (for the personal property floater). Spreading this amount of premium over the forty-eight states means that there is too little premium in any one state to determine whether the rate level is adequate or fair. Other classes of inland marine insurance have smaller volumes of premium, and some of them are so small that even the nationwide figures must be examined over a period of many years in order to judge their fairness and adequacy.

Such classes of inland marine business as registered mail, furriers' customers, and jewelers' block present catastrophe hazards of large proportions, and the nationwide premiums for a period of several years may be necessary to offset the results of one or two losses. Present inland marine premium volume is not sufficient to relate the experience of these various classes of insurance to state or local areas.

The new rate regulatory laws also recognize that there is need for rating service by the bureaus on some properties that may be rated according to filed schedules or according to the judgment of underwriters who have rated similar properties. Furriers' customers, jewelers' block, and garment contractors coverages may be rated according to filed schedules that measure the hazards present in those types of properties. Bridges and tunnels are rated according to the judgment of seasoned underwriters, because each bridge or tunnel is an entirely different project from any other bridge or tunnel and it has not been practical to prepare a rigid schedule for these divergent types of property. All such specifically quoted rates are filed with most state insurance departments when they are calculated by a rating bureau.

It became extremely important to the future of the inland marine business to see to it that rate regulatory laws were drawn in such a way as to recognize that many inland marine coverages cannot be rated according to any schedule or class rate. Those coverages, which according to the custom of the business are not rated by manual or class rates or by schedules, are to be rated individually by each company. That is, there is no collective action in connection with rates on that portion of the inland marine business for which rates, by long-established custom, are quoted by the individual company.

The Place of Judgment in Making Insurance Rates

It has been contended that judgment should be eliminated in the calculation of insurance rates and that all rates should be made according to rigid schedules or class rates. The fallacy in this argument is that no one can determine whether the schedules are exactly correct in every particular.

Even though a schedule is made up with the greatest of care, the weight attached to each factor of the schedule is established according to the judgment of some person or group of persons. It is not possible to determine statistically whether each factor is given the correct weight, because the detailed statistical system for securing such information would be too costly for the insurance business to support. In addition there is the ever-present threat of a catastrophe that might throw out of line all the computations based on past experience. Judgment necessarily remains a factor in inland marine insurance rating, and it is a large factor in all classes when the premium volume is small or when the losses are few but likely to be catastrophic when they do occur.

Inland Marine Rating Bureaus Not Mandatory

The rate regulatory laws do not require that an insurance company be a member or subscriber to an inland marine rating bureau. Companies that desire to operate independently may do so, and they may file their rates directly with the state insurance departments. In fact, most of the laws are so worded that the companies are required to file their rates, and the rating bureaus are brought into the picture by allowing a company to make its filing through a licensed rating bureau.

Thus a company may make its own filings or it may avail itself of the convenience of joining or subscribing to a rating bureau and having the bureau make the filings. Most of the insurance companies that write inland marine insurance do belong or subscribe to either the Inland Marine Insurance Bureau or the Transportation Insurance Rating Bureau. The task of making filings with approximately fifty insurance departments (including those of both states and territories) assumes large proportions, and most companies find that any small advantage to be gained by independent filing is outweighed by the convenience and economy of having the bureaus do the filing of all rates.

Deviations from Filed Rates

Many of the rating laws provide that a member or a subscriber company of a rating bureau may deviate from the filed rates of the bureau if it secures the approval of the insurance department. A company may find that its method of operation is such that its expense ratio or its loss ratio is less than that of the average of all companies. Insurance company expenses and loss ratios vary from company to company, depending upon the efficiency of management, the types of business written, the territory in which its agents are located, and other factors. The rates of the rating bureaus must be set so that all companies have an opportunity to operate at a fair profit. This means that the rates must be an average of what all the company experiences would require.

An insurance company that can operate at a lower cost than the average (including losses or expenses, or both) may desire to allow a part of the saving to benefit its policyholders in the form of reduced rates. This may be achieved by means of a downward deviation from the rates filed by the rating bureau. The usual procedure is for the company to file with the state insurance department a request for permission to deviate. A copy of the request is sent to the rating bureau of which the company is a member or subscriber.

The rating bureau has an opportunity to object if it regards the deviations as undesirable, in which case the insurance department may hold a hearing so that all interested parties may be heard. The rating bureau and the insurance company may waive the right to a hearing if they do not wish to be heard. The insurance department then decides upon the basis of all the facts presented whether to give the company permission to deviate from the bureau rates.

Requests for permission to deviate from filed rates are made infrequently by stock companies.

Some of the mutual companies have requested permission to deviate from the bureau rates in place of paying a dividend at the expiration of their policies. There are two ways in which mutual companies return the unused portion of the premium to their policyholders. The more common method is for the company to return the unused portion at the expiration of the policy in the form of a dividend. Other companies operate at a deviation, which

is feasible when a company can maintain relatively steady loss and expense ratios. These companies find it necessary to request permission from the insurance departments to deviate from the rates filed on their behalf by the rating bureaus.

Occasionally there are requests for permission to deviate in other particulars when the company has a special reason for operating at a different rate level from that established by the rating bureau. A company may wish to use a different form from the one filed by the bureau, or it may wish to deviate from the rates for a particular coverage. The procedure for filing and securing approval for such a deviation is the same as when a company wishes to deviate on all business.

Auditing of Inland Marine Daily Reports

For many years it has been customary in many states for the insurance companies to send all their fire insurance daily reports through an audit bureau, where they are checked for accuracy of rate and policy conditions. This has been done with automobile policies in some states. The insurance companies consider this necessary because fire insurance policies are written in many different offices. A central checking office is more efficient than a method whereby each company does its own checking. A central checking office also serves to prevent the deliberate use of incorrect rates, although this does not appear to be the major reason for such organizations.

It has not been customary to have inland marine daily reports checked by any central checking office. A large proportion of inland marine business is written at rates established by the home offices or the inland marine departments of the individual companies. The checking of these policies would serve no purpose because they are written by specially trained personnel in the same office where the rate is calculated. There is believed to be much less chance of error than with fire insurance policies, which are mostly written by agents and branch offices.

Prior to the enactment of the "All-Industry" type of rate regulatory law, several states required the auditing of daily reports of some inland marine business in order to make certain that the provisions of the fire insurance rating laws were being observed. It was felt by some officials that a check was needed to prevent the insurance companies from taking advantage of the freedom with

which inland marine policies could be written at that time. There were cases in which inland marine policies had been written to provide what was essentially fire insurance coverage in order to cut the fire insurance rate. The experience of the audit bureaus, however, seems to indicate that such instances were rare.

Many of the new rate regulatory laws give the rating bureaus permission to set up an auditing service on inland marine insurance, but none of them specifically require it. A few of the laws appear to go further and give the insurance department authority to require the inland marine rating bureaus to set up an auditing service. One insurance department has required the bureaus to audit inland marine daily reports for the classes of business for which the bureaus promulgate rates.[5] Rating bureaus reportedly are finding only a small number of errors in the writing of inland marine daily reports, and these arise mostly in the process of rate computation. They are of the sort that probably would be caught by the policy checkers in the home offices of the companies.

The Place of Statistics in the Making of Inland Marine Rates

The ultimate measure of whether rates are adequate and yet not excessive is the ratio of losses incurred to the premiums earned by the insurance companies for the coverage granted in the policies. It is easy for the underwriter to look at the premiums earned in a past year and to compare them with the incurred losses to determine whether the year's operations were profitable. It is not so easy to project those results into the future to determine what changes should be made in order to adjust future rates to the desired levels of adequacy and fairness.

A major difficulty in applying loss statistics to rate making is the fact that inland marine insurance is made up of fifty or more different types of insurance coverage. The year's results may have been profitable in one class and extremely unprofitable in another. It is necessary to separate the losses and premiums into the major groups that go to make up inland marine insurance. This is done by means of a coding system, under which the various types of inland marine insurance are assigned numbers. The premium for each policy and the amount of each loss are coded according to the number designated for the type of business.

Most insurance companies use tabulating machines for the com-

[5] The state of Wisconsin made this requirement in 1948.

putation of experience figures. The code number, the amount of premium or loss, and other information regarding each policy are punched on a specially prepared card. These cards are run through tabulating machines that compute the total premiums and losses for each class set up in the coding system. Each insurance company reports its total experience segregated by classes, and the rating bureaus combine the total classified experience of all their members and subscribers. This combined experience is filed with the state insurance departments for their guidance in determining whether the inland marine rates filed are adequate and fair.

Classified loss experience shows the premiums written and the losses paid during the year. The ratio of losses paid to premiums written is not a completely accurate reflection of experience. The true experience is shown by the premiums earned and the losses incurred. The premiums earned during the year come from those portions of all policies that were in effect during the year. Many of these policies were written during previous years. Premiums written during any year include premiums for policies that extend beyond the year in which they are written. If a company writes a large number of three-year policies during a year, the premiums written may be much higher than the premiums earned during that year.

Insurance companies have found it extremely expensive to calculate the earned premiums on the dozens of separate classes that make up inland marine business. It has been the practice to report the classified loss experience on a premium-written-and-losses-paid basis and then to estimate the premiums earned and losses incurred from the general averages on the total business of the company.

Another difficulty in relating loss experience to rates is that the experience of any one year is inconclusive. There may be a series of large losses that makes the loss experience look bad, or a year may be exceptionally good because there happened to be no large losses. It is felt by many inland marine underwriters that a minimum period of five years must be used in order to determine whether the rates for any type of insurance are adequate or fair. In times when loss ratios are changing, the five-year experience may be inadequate, because the trend may be changing in the middle of the period being studied.

Another difficulty that is particularly troublesome in inland marine classified loss experience is the fact that the premium

volume in many classes is extremely small in relation to the possible losses. For example, a few years ago a single fur storage warehouse loss amounted to more than $3,500,000, yet the annual premium volume in this class amounted to only about $4,000,000.

The loss experience for the registered mail class in many years appears to be extremely favorable, yet the annual premium volume is only about $2,000,000. The amount at risk subject to a single loss frequently amounts to many millions of dollars. It may take many times five years' experience to get a true indication of the experience in a small premium class.

The multiplicity of rating factors makes it impossible to apply loss statistics to each of them. For example, the experience on the personal property floater was unsatisfactory for many years, but a dozen or more factors are used in rating a personal property floater. Any attempt to break down the loss experience to show the effect of each individual rate factor would result in a classification system with thousands of divisions. The divisions would be so small that the results in any one of them would be entirely inconclusive.

The question arises what use can be made of the statistics collected from the companies and consolidated by the rating bureaus. The total loss experience in the inland marine business does tell the companies and the rate regulatory officials whether the general rate level in the inland marine business is excessive, adequate, or inadequate.

When the general rate level appears to be satisfactory, a further inquiry may be made by examining individual classes to see if they appear to be out of line with the general experience. If the general experience is not satisfactory, an examination of the breakdown by classes may indicate where the excessive or inadequate rates are located. For example, a distinct unsatisfactory loss experience in connection with the personal property floater showed up in the classified loss experience. The experience in different states did not show any uniform pattern, but the total personal property floater experience over a period of years showed an upward trend and was consistently at an unprofitable level. It was evident that some upward adjustment of rate was necessary.

The rating bureaus were faced with the problem of determining what changes to make. A further examination of individual claims indicated that the bulk of personal property floater losses come

from a multitude of small claims and that a smaller proportion come from large losses.

The rating bureaus proposed to the state insurance departments that increases be made in the rates for the first $5,000 of coverage and in the minimum premiums. It is true that the actual increases were based on the judgment of the underwriters, but the judgment was based upon the available figures and upon the long experience of the inland marine underwriters in handling this type of coverage.

Statistics may be used as a guide in the adjustment of rate levels, and sometimes these figures may indicate the actual changes that should be made. In most cases, however, the statistics can be used only as a guide to the general rate level, and the actual changes must be based largely upon judgment.

Future of Inland Marine Insurance under Rate Regulation

Trained observers see a trend toward a further standardization of the inland marine insurance business. In the few years since the rating bureaus have become licensed formally under the rate regulatory laws, they have found it desirable to make rate filings on additional classes of inland marine coverages. It is likely that the bureaus gradually will add to the list of filed and controlled classes as the premium volume grows and as knowledge about comparatively new classes increases.

Standardization has proven helpful when there is sufficient uniformity within a class to justify a standard system of rates. It is easier for the insurance agent to sell a policy when he can quote a rate from a manual than when he has to write to the insurance company home office for a quotation. It is easier for the state regulatory officials and the insurance companies to check the adequacy of rate levels when the rates are standardized.

It is desirable to maintain simplicity in rating methods as far as possible, in order that adequacy and fairness may be determined without difficulty. Inland marine insurance has become adjusted to a degree of regulation, and the insurance companies continue to operate without excessive confusion. There seems to be a tendency for companies, rating bureaus, and regulatory officials to move cautiously in the minute scrutiny of the inland marine insurance business, and there is little reason to expect that the regulation will prove unduly onerous.

Questions

1. What are the purposes of governmental regulation of the insurance business?

2. Why has inland marine insurance been subject to less regulation of rates and coverages than other forms of insurance?

3. Discuss the circumstances that brought about some industry regulation of inland marine rates and forms in the 1930's.

4. Upon what basis had the state governments established the right to regulate the insurance business?

5. Discuss the effect upon the insurance business of the S. E. U. A. decision.

6. What needs of the inland marine underwriter are recognized in the "All-Industry" pattern of state regulation?

7. Why is the nationwide experience considered to be necessary in determining the fairness and adequacy of inland marine rates?

8. Why is it not considered possible to eliminate judgment as a factor in the computation of inland marine rates?

9. What are some of the difficulties encountered in trying to determine the fairness and adequacy of inland marine rates by statistical reports?

Appendices

APPENDIX A

Nation-wide Definition and Interpretation of the Insuring Powers of Marine and Transportation Underwriters

Adopted by the National Convention of Insurance Commissioners of the United States at Chicago—June 2, 1933

The following Definition and Interpretation do not include or attempt to define all of the powers which may be exercised by insurers authorized by various State Insurance Laws to transact Marine, Inland Marine or Transportation Insurance in such States. The purpose and scope of this nationwide definition and interpretation are to clarify, in respect to the kinds of insurance hereinafter mentioned, the meaning and application of State Insurance Laws with particular respect to questions of overlapping powers of various kinds of insurers and also of certain insurance coverages as to which there has been misapprehension or dispute among the Fire, Marine and Casualty Insurers. The following Nation-Wide Definition and Interpretation have been adopted and promulgated by the National Convention of Insurance Commissioners of the United States to remove doubts as to the kinds of risks and coverages hereinafter mentioned and to determine what kinds of insurance coverages may and may not be written in the United States. Uniformity of understanding and practice as to insuring powers, frequently closely related to domestic and foreign commerce, both justify and require, in the judgment of the Convention, uniform and nation-wide definition.

I. Marine and/or transportation policies may cover under the following conditions:

A. IMPORTS

1. Imports on consignment may be covered wherever the property may be and without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.

A shipment "on consignment" shall mean property consigned and intrusted to a factor or agent to be held in his care, or under his control for sale for account of another, or for exhibit or trial or approval or auction, and if not disposed of, to be returned.

2. Imports not on consignment in such places of storage as are usually employed by importers, provided the coverage of the issuing companies includes hazards of transportation.

Such policies may also include the same coverage in respect to property purchased on C.I.F. terms or "spot" purchases for inclusion with or in substitution for bona fide importations.

An import, as a proper subject of marine or transportation insurance, shall be deemed to maintain its character as such so long as the property remains segregated in the original form or package in such a way that it can be identified and has not become incorporated and mixed with the general mass of property

in the United States, and shall be deemed to have been completed when such property has been:

(a) Sold and delivered by the importer, factor or consignee; or

(b) Removed from place of storage as described in paragraph "2" above and placed on sale as part of importer's stock in trade at a point of sale-distribution; or

(c) Delivered for manufacture, processing or change in form to premises of the importer or of another used for any of such purposes.

B. EXPORTS

1. Exports may be covered wherever the property may be without restrictions as to time, provided the coverage of the issuing companies includes hazards of transportation.

An export, as a proper subject of marine or transportation insurance, shall be deemed to acquire its character as such when designated or while being prepared for export and retain that character unless diverted for domestic trade, and when so diverted, the provisions of this Ruling respecting domestic shipments shall apply, provided, however, that this provision shall not apply to long established methods of insuring certain commodities, e. g., cotton.

C. DOMESTIC SHIPMENTS

1. Domestic shipments on consignment, provided the coverage of the issuing companies includes hazards of transportation.

(a) Property shipped on consignment for sale or distribution, while in transit and not exceeding thirty (30) days after arrival at consignee's premises or other place of storage or deposit; and

(b) Property shipped on consignment for exhibit, or trial, or approval, or auction, while in transit, while in the custody of others and while being returned.

2. Domestic shipments not on consignment, provided the coverage of the issuing companies includes hazards of transportation, beginning and ending within the United States, provided that such shipments shall not be covered at points of sale-distribution or manufacturing premises nor after arrival at such points or at premises owned, leased or controlled by assured or purchaser, nor for more than thirty (30) days at other place of storage or deposit, except in premises of transportation companies or freight forwarders, when such storage is incident to transportation.

D. BRIDGES, TUNNELS AND OTHER INSTRUMENTALITIES OF TRANSPORTATION AND COMMUNICATION (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion are the only hazards to be covered. Piers, wharves, docks and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion. Other aids to navigation and transportation, including dry docks and marine railways, against all risks.

E. PERSONAL PROPERTY FLOATER RISKS

1. Covering Individuals.

(a) Tourist and/or Personal Effects Floater Policies, which policies shall exclude hazards while in a permanent residence of the assured.

(b) Personal Fur Floater.

(c) Personal Jewelry Floaters.

2. Covering Individuals and/or Generally.

(a) Fine Arts Floaters. To cover objects of art such as pictures, statuary, bronzes and antiques, rare manuscripts and books, articles of virtu, etc., but excluding stained glass windows and carved glass used for commercial purposes.

(b) Musical Instrument Floaters, excluding household instruments not customarily moved from the assured's premises.

(c) Radium Floaters.

(d) Physicians' and Surgeons' Instrument Floaters. Such policies shall not cover instruments and professional equipment not commonly carried with the assured, nor furniture and/or fixtures.

(e) Pattern Floaters, excluding coverage on the assured's premises.

(f) Theatrical Floaters, excluding buildings and their improvements and betterments and furniture and fixtures that do not travel about with theatrical troupes.

(g) Film Floaters, including builder's risk during the production and coverage on completed negatives and positives and sound records.

(h) Salesmen's Samples Floaters, excluding coverage on the assured's premises.

(i) Wedding Present Floaters for not exceeding ninety (90) days after the date of the wedding.

(j) Jewelers' Block Policies, excluding improvements and betterments of buildings, furniture, fixtures, tools and machinery of the assured.

(k) Exhibition Policies on property while on exhibition and in transit to and/or from such exhibitions.

(l) Horses and Wagons Policies covering wherever horses or other animals, wagons and equipment may be.

(m) Installation Risks covering loss to seller on account of physical damage to property. Such policies shall cover articles of machinery or equipment only during the period of installation and testing.

(n) Movable Equipment Floaters, e. g., contractors' equipment, mechanical sales devices, storage batteries; stevedores', divers' and undertakers' equipment and other property of mobile or floating nature, not on sale or consignment, or in the course of manufacture, which has come into the custody and/or control of parties who intend to use such property for the purpose for which it was manufactured or created.

Such policies shall not include coverage of storage risks at premises controlled or leased by the assured, except where purely incidental to the regular or frequent use of the equipment or property.

(o) Miscellaneous Movable Articles Floaters, e. g., outboard motors, parachutes and balloons, scientific and surveyors' instruments, harvesters; articles for sport and recreation, musical scores and orchestrations and other similar property of a mobile or floating nature, not on sale or consignment, or in the course of manufacture, which has come into the custody and/or control of parties who intend to use such property for the purpose for which it was manufactured or created, such policies to contain an itemized list of articles insured, with description and amount or value of each.

(p) Property in transit to and/or from and while waiting for or undergoing processing in bleacheries or fumigatories or on premises of dyesters, throwsters and other similar processors until delivered to storage warehouses or final place of delivery contemplated at the time the shipment was made. Provided, however, that such policies shall not cover bailee's property at his premises.

(q) Installment Sales and Leased Property. Policies covering property sold under conditional contract of sale, partial payment contract, installment sales contract, or leased. Such policies must cover in transit but shall not extend beyond the termination of the seller's or lessor's interest.

Provided, however, that property not mobile in character, under lease or leased on a royalty basis, may not be so insured although title remains in the lessor.

(r) Bailee's Customers Policies covering personal property of customers. Such policies shall cover in transit and during process at e. g., laundrymen's, dyers' and cleaners' premises, provided, however, that such policies shall not cover bailee's property at his premises.

(s) Furriers and/or Fur Storer's Customer's Policies (i. e., policies under which certificates and/or receipts are issued by furriers and/or fur storers) covering specified garments the property of customers, but only while in the custody of the furrier and/or fur storer.

(t) Silverware Floaters, excluding the permanent residence of the assured.

II. Marine and/or transportation policies shall not cover property under the following conditions:

A. Storage of assured's merchandise, except as hereinbefore provided.

B. Merchandise in course of manufacture, the property of and on the premises of the manufacturer.

C. Furniture and fixtures in use, or improvements to buildings except as provided above.

D. Fire risk on all building materials while in course of erection after seller's interest ceases.

E. Fire or other risks on merchandise in permanent location, sold under partial payment, contract of sale, or installment sales contract, which involves protection of the purchaser's interest after seller's interest ceases.

F. Risks on monies and/or securities in safes, vaults, safety deposit vaults, bank or assured's premises, except while in course of transportation.

G. Any policy substantially the equivalent of the "Personal Property Floater," sometimes referred to as the "Householder's Comprehensive."

H. Risks of fire, tornado, sprinkler leakage, earthquake, hail, explosion, riot, and/or civil commotion on buildings, structures, wharves, piers, docks, bulkheads and sheds and other fixed real property on land and/or over water except as provided in Section I. D.

Interpretative Note

Agreed to by Fire, Marine and Casualty insurers as an aid to the Joint Committee on Interpretation and Complaint in their construction of the "Nation-Wide Definition"

1. In the interpretation of the provisions of Sections A and B of the Definition and Interpretation as applied to any particular business or policy, due weight shall be given to the spirit of the said Definition, which is, that in order to make the storage risk on the property insured a proper subject for coverage

under a marine policy, the storage risk must be incidental to the transportation risk. Where the transportation risk is incidental to the storage risk, then it is not a proper subject for coverage under a marine contract.

Among the tests by which the foregoing may be judged are:

(a) Where the premium charged on an entire policy is less or only equal to what would have been received on the storage portion at the filed rates for fire insurance, this fact shall be considered as *prima facie* evidence that the transportation risk is incidental to the storage risk and that the policy does not come within the spirit of the Definition, unless this factor is outweighed by other considerations.

(b) Where the rate of premium charged under the policy for the storage portion of the risk is less or only equal to what would have been charged under the rates promulgated by recognized fire rating organizations, this fact shall be considered *prima facie* evidence that the policy does not come within the spirit of the Definition, unless this fact is outweighed by other considerations.

2. In the consideration of specific cases, due weight should be given to all surrounding circumstances, including, among others, the elements of premium, rate and time in storage.

[The foregoing "Nation-Wide Definition" has been adopted and is in effect in the following states, but modifications have been made in all these states:

Arizona	Kentucky	North Carolina
Alabama	Louisiana	Oregon
Arkansas	Maine	Pennsylvania
California	Maryland	Rhode Island
Connecticut	Massachusetts	South Carolina
Delaware	Michigan	South Dakota
District of Columbia	Minnesota	Vermont
Florida	Mississippi	Virginia
Georgia	Missouri	Washington
Idaho	New Hampshire	West Virginia
Illinois	New Jersey	Wyoming
Indiana	New York	

The "Nation-Wide Definition" is not in effect in the following states:

Colorado	Nevada	Tennessee
Iowa	New Mexico	Utah
Kansas	North Dakota	Wisconsin
Montana	Ohio	
Nebraska	Oklahoma	

Note: The state of Texas has a special definition that has almost the same effect as that of the "Nation-Wide Definition."]

APPENDIX B

PRINTED IN U. S. A. (Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification Territories, March 15, 1922, as amended August 1, 1930 and June 15, 1941.)

NYCS FTD-4 1st SHEET

1

NEW YORK CENTRAL SYSTEM

UNIFORM STRAIGHT BILL OF LADING
ORIGINAL—NOT NEGOTIABLE

Shipper's No.__________
Agent's No.__________

THE NEW YORK CENTRAL RAILROAD COMPANY

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading,

at______________________________, 19____

from______________________________

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only.)

Consigned to______________________________

Destination_______________State of_______________County of_______________

Route______________________________

Delivering Carrier_______________Car Initial__________Car No.__________

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

____
(Signature of Consignor)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $__________
to apply in prepayment of the charges on the property described hereon.

____
Agent or Cashier

Per____________________
(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$_______________

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

____________________per____________________

____________________Shipper. ____________________Agent.

Per____________________ Per____________________

Permanent postoffice address of Shipper____________________ 1

MOORE BUSINESS FORMS, INC., ELMIRA, N.Y.

Uniform Straight Bill of Lading — Contract Terms and Conditions

Sec. 1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

Sec. 2. (a) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(b) As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing this bill of lading, or carrier on whose line the loss, damage, injury or delay occurred, within nine months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid.

(c) Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: *Provided,* That the carrier reimburse the claimant for the premium paid thereon.

Sec. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 4. (a) Property not removed by the party entitled to receive it within the free time allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the carrier: *Provided,* That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time

and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published: *Provided,* That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent, or given.

(c) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale: *Provided,* That if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(d) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(e) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(f) Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and, except in case of carrier's negligence, when received from or delivered to such stations, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels.

Sec. 5. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for such charges. *Provided,* That, where the carrier has been instructed by the shipper or consignor to deliver such prop-

erty to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of said property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in said property, and (b) prior to delivery of said property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of said property; and, in such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner, shall be liable for such additional charges. If the consignee has given to the carrier erroneous information as to who the beneficial owner is, such consignee shall himself be liable for such additional charges. On shipments reconsigned or diverted by an agent who has furnished the carrier in the reconsignment or diversion order with a notice of agency and the proper name and address of the beneficial owner, and where such shipments are refused or abandoned at ultimate destination, the said beneficial owner shall be liable for all legally applicable charges in connection therewith. If the reconsignor or diverter has given to the carrier erroneous information as to who the beneficial owner is, such reconsignor or diverter shall himself be liable for all such charges.

If a shipper or consignor of a shipment of property (other than a prepaid shipment) is also the consignee named in the bill of lading and, prior to the time of delivery, notifies, in writing, a delivering carrier by railroad (a) to deliver such property at destination to another party, (b) that such party is the beneficial owner of such property, and (c) that delivery is to be made to such party only upon payment of all transportation charges in respect of the transportation of such property, and delivery is made by the carrier to such party without such payment, such shipper or consignor shall not be liable (as shipper, consignor, consignee, or otherwise) for such transportation charges but the party to whom delivery is so made shall in any event be liable for transportation charges billed against the property at the time of such delivery, and also for any additional charges which may be found to be due after delivery of the property, except that if such party prior to such delivery has notified in writing the delivering carrier that he is not the beneficial owner of the property, and has given in writing to such delivering carrier the name and address of such beneficial owner, such party shall not be liable for any additional charges which may be found to be due after delivery of the property; but if the party to whom delivery is made has given to the carrier erroneous information as to the beneficial owner, such party shall nevertheless be liable for such additional charges. If the shipper or consignor has given the delivering carrier erroneous information as to who the beneficial owner is, such shipper or consignor shall himself be liable for such transportation charges, notwithstanding the foregoing provisions of this paragraph and irrespective of any provisions to the contrary in the bill of lading or in the contract of transportation under which the shipment was made. The term "delivering carrier" means the line-haul carrier making ultimate delivery.

Nothing herein shall limit the right of the carrier to require at time of shipment the prepayment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Where delivery is made by a common carrier by water the foregoing provisions

of this section shall apply, except as may be inconsistent with Part III of the Interstate Commerce Act.

Sec. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

Sec. 9. (a) If all or any part of said property is carried by water over any part of said route, and loss, damage or injury to said property occurs while the same is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water (this bill of lading being such bill of lading if the property is transported by such water carrier thereunder) and by and under the laws and regulations applicable to transportation by water. Such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in the Act of the Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc.," and of other statutes of the United States according carriers by water the protection of limited liability, as well as the following subdivisions of this section; and to the conditions contained in this bill of lading not inconsistent with this section, when this bill of lading becomes the bill of lading of the carrier by water.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hulls, machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer, trans-ship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(d) General Average shall be payable according to the York-Antwerp Rules of 1924, Sections 1 to 15, inclusive, and Sections 17 to 22, inclusive, and as to matters not covered thereby according to the laws and usages of the Port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general aver-

age to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

Sec. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

Uniform Express Receipt — Non-Negotiable

Terms and Conditions

1. The provisions of this receipt shall inure to the benefit of and be binding upon the consignor, the consignee and all carriers handling this shipment and shall apply to any reconsignment, or return thereof.

2. In consideration of the rate charged for carrying said property, which is dependent upon the value thereof and is based upon an agreed valuation of not exceeding fifty dollars for any shipment of 100 pounds or less and not exceeding fifty cents per pound, actual weight, for any shipment in excess of 100 pounds, unless a greater value is declared at the time of shipment, the shipper agrees that the company shall not be liable in any event for more than fifty dollars for any shipment of 100 pounds or less, or for more than fifty cents per pound, actual weight, for any shipment weighing more than 100 pounds, unless a greater value is stated herein. Unless a greater value is declared and stated herein the shipper agrees that the value of the shipment is as last above set out and that the liability of the company shall in no event exceed such value.

3. Unless caused by its own negligence or that of its agents, the company shall not be liable for—
   a. Difference in weight or quantity caused by shrinkage, leakage, or evaporation.
   b. The death, injury, or escape of live freight.
   c. Loss of money, bullion, bonds, coupons, jewelry, precious stones, valuable papers, or other matter of extraordinary value, unless such articles are enumerated in the receipt.

4. Unless caused in whole or in part by its own negligence or that of its agents, the company shall not be liable for loss, damage or delay caused by—
   a. The act or default of the shipper or owner.
   b. The nature of the property, or defect or inherent vice therein.
   c. Improper or insufficient packing, securing, or addressing.
   d. The Act of God, public enemies, authority of law, quarantine, riots, strikes, perils of navigation, the hazards or dangers incident to a state of war, or occurrence in customs warehouse.

e. The examination by, or partial delivery to the consignee of C.O.D. shipments.
f. Delivery under instructions of consignor or consignee at stations where there is no agent of the company after such shipments have been left at such stations.

5. Packages containing fragile articles or articles consisting wholly or in part of glass must be so marked and be packed so as to insure safe transportation by express with ordinary care.

6. When consigned to a place at which the express company has no office, shipments must be marked with the name of the express station at which delivery will be accepted or be marked with forwarding directions if to go beyond the express company's line by a carrier other than an express company. If not so marked shipments will be refused.

7. As conditions precedent to recovery claims must be made in writing to the originating or delivering carrier within nine months after delivery of the property or, in case of failure to make delivery, then within nine months and fifteen days after date of shipment; and suits shall be instituted only within two years and one day after the date when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof.

8. If any C.O.D. is not paid within thirty days after notice of non-delivery has been mailed to the shipper the company may at its option return the property to the consignor.

9. Free delivery will not be made at points where the company maintains no delivery service; at points where delivery service is maintained free delivery will not be made at addresses beyond the established and published delivery limits.

Special Additional Provisions as to Shipments Forwarded by Vessel from the United States to Places in Foreign Countries

10. If the destination specified in this receipt is in a foreign country, the property covered hereby shall, as to transit over ocean routes and by their foreign connections to such destination, be subject to all the terms and conditions of the receipts or bills of lading of ocean carriers as accepted by the company for the shipment, and of foreign carriers participating in the transportation, and as to such transit is accepted for transportation and delivery subject to the acts, ladings, laws, regulations, and customs of overseas and foreign carriers, custodians, and governments, their employees and agents.

11. The company shall not be liable for any loss, damage, or delay to said shipments over ocean routes and their foreign connections, the destination of which is in a foreign country, occurring outside the boundaries of the United States, which may be occasioned by any such acts, ladings, laws, regulations, or customs. Claims for loss, damage or delay must be made in writing to the carrier at the port of export or to the carrier issuing this receipt, within nine months after delivery of the property at said port or in case of failure to make such delivery then within nine months and fifteen days after date of shipment; and claims so made against said delivering or issuing carrier shall be deemed to have been made against any carrier which may be liable hereunder. Suits may be instituted only within two years and one day after the date when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof. Where claims are not so made, and/or suits

are not instituted thereon in accordance with the foregoing provisions, the carrier shall not be liable.

12. It is hereby agreed that the property destined to such foreign countries, and assessable with foreign governmental or customs duties, taxes or charges, may be stopped in transit at foreign ports, frontiers or depositories, and there held pending examination, assessments and payments, and such duties and charges, when advanced by the company shall become a lien on the property.

APPENDIX C

Scheduled Property Floater Policy

Policy No. .... Company
"Stock" or "Mutual"

[Space for name and address
of the insurance company
issuing the policy]

Amount	*Rate*	*Premium*
$ ______	______	$ ________

In consideration of the stipulations herein named
and of .... dollars premium,
does insure .... hereinafter called the Assured, whose
address is ....
from the .... day of ...., 19...., at noon,
to the .... day of ...., 19...., at noon,
Standard Time at place of issuance, to an amount not exceeding ....
Dollars, on the following described property:

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

In Witness Whereof, this Company has executed and attested these presents, but this policy shall not be valid unless countersigned by a duly authorized agent of this Company at

[Space for printed signatures and titles of proper company officers.]

Countersigned this
______________ day of ________, 19 _____ ______________________ Agent.

Scheduled Property Floater Policy
Conditions

1. *Misrepresentation and Fraud Clause.* This policy shall be void if the Assured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof or in case of any fraud, attempted fraud or false swearing by the Assured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

2. Notice of Loss Clause. The Assured shall as soon as practicable report to this Company or its agent every loss or damage which may become a claim under this policy and shall also file with the Company or its agent within ninety (90) days from date of loss a detailed sworn proof of loss. Failure by the Assured to report the said loss or damage and to file such sworn proof of loss as hereinbefore provided shall invalidate any claim under this policy for such loss.

3. Examination Under Oath Clause. The Assured shall submit, and so far as is within his or their power shall cause all other persons interested in the property and members of the household and employees to submit, to examinations under oath by any persons named by the Company, relative to any and all matters in connection with a claim and subscribe the same; and shall produce for examination all books of account, bills, invoices, and other vouchers or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Company or its representatives, and shall permit extracts and copies thereof to be made.

4. Valuation. Unless otherwise provided in form attached, this Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs and the loss or damage shall be ascertained or estimated according to such actual cash value with proper deduction for depreciation, however caused, and shall in no event exceed what it would then cost the Assured to repair or replace the same with material of like kind and quality.

5. Settlement of Claims. All adjusted claims shall be paid or made good to the Assured within sixty (60) days after presentation and acceptance of satisfactory proof of interest and loss at the office of this Company. No loss shall be paid hereunder if the Assured has collected the same from others.

6. Bailee Clause. This insurance shall in no wise inure directly or indirectly to the benefit of any carrier or other bailee.

7. Subrogation Clause. In the event of any payment under this policy the Company shall be subrogated to all the Assured's rights of recovery therefor against any person or organization and the Assured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Assured shall do nothing after loss to prejudice such rights.

8. Reinstatement. Every claim paid hereunder reduces the amount insured by the sum so paid unless the same be reinstated by payment of additional premium thereon.

9. Pair or Set. It is understood and agreed that, in the event of loss of or damage to any article or articles which are a part of a set, the measure of loss of or damage to such article or articles shall be a reasonable and fair proportion of the total value of the set, giving consideration to the importance of said article or articles, but in no event shall such loss or damage be construed to mean total loss of set.

10. Machinery. In case of loss or injury to any part of the insured property consisting, when complete for sale or use, of several parts, this Company shall only be liable for the insured value of the part lost or damaged.

11. Sue and Labor. In case of loss or damage, it shall be lawful and necessary for the Assured, his or their factors, servants and assigns, to sue, labor, and travel for, in and about the defense, safeguard and recovery of the property insured hereunder, or any part thereof without prejudice to this insurance; nor shall the acts of the Assured or this Company, in recovering, saving and preserving the property insured in case of loss or damage, be considered a waiver

or an acceptance of abandonment; to the charge whereof this Company will contribute according to the rate and quantity of the sum herein insured.

12. Suit Clause. No suit, action or proceeding for the recovery of any claim under this policy shall be sustainable in any court of law or equity unless the same be commenced within twelve (12) months next after discovery by the Assured of the occurrence which gives rise to the claim. Provided, however, that if by the laws of the State within which this policy is issued such limitation is invalid, then any such claims shall be void unless such action, suit or proceeding be commenced within the shortest limit of time permitted by the laws of such State to be fixed herein.

13. Appraisal Clause. If the Assured and the Company fail to agree as to the amount of loss, each shall, on the written demand of either, made within sixty days after receipt of proof of loss by the Company, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, then, on the request of the Assured or the Company, such umpire shall be selected by a judge of a court of record in the state in which such appraisal is pending. The appraisers shall then appraise the loss, stating separately the actual cash value at the time of loss and the amount of loss, and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The Assured and the Company shall each pay his or its chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The Company shall not be held to have waived any of its rights by any act relating to appraisal.

14. Other Insurance. It is expressly agreed that this insurance shall not cover to the extent of any other insurance whether prior or subsequent hereto in date, and by whomsoever effected, directly or indirectly, covering the same property and this Company shall be liable for loss or damage only for the excess value beyond the amount of such other insurance.

15. Cancelation Clause. This policy may be canceled by the Assured by mailing to the Company written notice stating when thereafter such cancelation shall be effective. This policy may be canceled by the Company by mailing to the Assured at the address shown in this policy or last known address written notice stating when not less than .... days thereafter such cancelation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date of cancelation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Assured or by the Company shall be equivalent to mailing.

If the Assured cancels, earned premiums shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premiums shall be computed pro rata. Premium adjustment may be made at the time cancelation is effected and, if not then made, shall be made as soon as practicable after cancelation becomes effective. The Company's check or the check of its representative mailed or delivered as aforesaid shall be a sufficient tender of any refund of premium due to the Assured.

16. Changes. No officer, agent or other representative of this Company shall have power to waive or be deemed to have waived any provision or condition of this policy unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

Personal Property Floater

Property Covered

1. Personal property owned, used or worn by the person in whose name this policy is issued and members of the Assured's family of the same household, while in all situations, except as hereinafter provided.

Perils Insured

2. All risks of loss of or damage to property covered except as hereinafter provided.

Amounts of Insurance

3. Insurance attaches only with respect to those items in this paragraph for which an amount is shown and only for such amount.

Item	Amount	
(a)	$................	On unscheduled personal property, except as hereinafter provided.
(b)	$................	On personal jewelry, watches, furs, fine arts and other property as per schedules attached hereto. Each item considered separately insured.
(c)	$................	On unscheduled personal jewelry, watches and furs, in addition to the amount of $250. provided in paragraph 5(b), against fire and lightning only.
Total	$................	

Extensions

4. (a) Subject otherwise to all of the conditions of this policy, Item (a) Paragraph 3, includes, at the sole option of the Assured, personal property of others while on the premises of the residences of the Assured, and personal property of servants while they are actually engaged in the service of the Assured and while in the physical custody of such servants outside such residences;

(b) The Company will also pay the actual loss of or damage (except by fire) to property of the Assured not specifically excluded by this policy caused by theft or attempt thereat; or by vandalism or malicious mischief to the interior of the residences of the Assured;

but in no event shall the Company's combined liability for loss or damage covered under this Paragraph 4 and for insurance attaching under Item (a) Paragraph 3, exceed the amount of insurance shown in Item (a) Paragraph 3.

(c) Automatic Reinstatement of Losses. In the event of any loss payment under this policy not exceeding Two Hundred Fifty Dollars ($250), the amount of insurance under this policy shall not be reduced.

Limitations

5. (a) As respects unscheduled personal property ordinarily situated throughout the year at residences other than the principal residence of the Assured, the

Company shall not be liable in excess of ten per cent of the amount of insurance set forth in Item (a) Paragraph 3.

(b) As respects any one loss of unscheduled jewelry, watches and furs, the Company shall not be liable for more than $250.00 unless the loss is covered under Item (c) Paragraph 3, in which event the Company's liability for such loss is limited to the amount stated therein.

(c) As respects any one loss of money including numismatic property, the Company shall not be liable for more than $100. As respects any one loss of notes, securities, stamps including philatelic property, accounts, bills, deeds, evidences of debt, letters of credit, passports, documents and railroad and other tickets, the Company shall not be liable for more than $500.

Exclusions

6. This policy does not insure

(a) animals; automobiles, motorcycles, aircraft, boats or other conveyances (except bicycles, tricycles, baby carriages, invalid chairs and similar conveniences), or their equipment or furnishings except when removed therefrom and actually on the premises of the Assured; property of any Government or subdivision thereof;

(b) unscheduled property pertaining to a business, profession or occupation of the persons whose property is insured hereunder, excepting professional books, instruments and other professional equipment owned by the Assured while actually within the residences of the Assured;

(c) against breakage of eye glasses, glassware, statuary, marbles, bric-a-brac, porcelains and similar fragile articles (jewelry, watches, bronzes, cameras and photographic lenses excepted), unless occasioned by theft or attempt thereat, vandalism or malicious mischief, or by fire, lightning, windstorm, earthquake, flood, explosion, falling aircraft, rioters, strikers, collapse of building, accident to conveyance or other similar casualty, nor unless likewise occasioned, against marring or scratching of any property not specifically scheduled herein;

(d) against mechanical breakdown; against loss or damage to electrical apparatus caused by electricity other than lightning unless fire ensues and then only for loss or damage by such ensuing fire;

(e) against wear and tear; against loss or damage caused by dampness of atmosphere or extremes of temperature unless such loss or damage is directly caused by rain, snow, sleet, hail, bursting of pipes or apparatus; against deterioration, moth, vermin and inherent vice; against damage to property (watches, jewelry and furs excepted) occasioned by or actually resulting from any work thereon in the course of any refinishing, renovating or repairing process;

(f) property on exhibition at Fairgrounds or on the premises of any National or International Exposition unless such premises are specifically herein described;

(g) against loss or damage arising from war, invasion, hostilities, rebellion, insurrection, seizure or destruction under quarantine or customs regulations, confiscation by order of any Government or public authority and risks of contraband or illegal transportation or trade. This clause shall not be construed to apply to strikes, riots or civil commotions, nor to damage or destruction by civil authority during a conflagration and for the purposes of retarding the same, provided neither such conflagration nor such damage or destruction is caused or contributed to by war, invasion, hostilities, rebellion, insurrection or warlike opera-

tions. This sub-paragraph shall not be affected by any endorsement which does not specifically refer to it.

Declarations of the Assured

7. The following are the approximate values of the unscheduled personal property, other than jewelry, watches and furs, as estimated by the Assured, at the time of issuance of this policy:

	Wherever Located	(of which the following amounts involve personal property ordinarily situated throughout the year at residences other than principal residence)
(a) Silverware and pewter	$	($)
(b) Linens (including dining room and bedroom)	$	($)
(c) Clothing (Men's, Women's, Children's)	$	($)
(d) Rugs (including floor coverings and draperies)	$	($)
(e) Books	$	($)
(f) Musical Instruments (including pianos)	$	($)
(g) Television sets, radios, record players and records	$	($)
(h) Paintings, etchings, pictures and other objects of art	$	($)
(i) China and glassware (including bric-a-brac)	$	($)
(j) Cameras & Photographic equipment	$	($)
(k) Golf, hunting, fishing and other sports & hobby equipment	$	($)
(l) Refrigerators, washing machines, stoves, electrical appliances and other kitchen equipment	$	($)
(m) Bedding (including blankets, comforters, covers, pillows, mattresses, and springs)	$	($)
(n) Furniture (including tables, chairs, sofas, desks, beds, chests, lamps, mirrors, clocks)	$	($)
(o) All other personal property (including wines, liquors, foodstuffs, garden and lawn tools and equipment, trunks, traveling bags, children's playthings, miscellaneous articles in basement and attic) and professional equipment, if any, covered under paragraph 6 (b)	$	($)
Total	$	($)

Note: If the total value ordinarily situated throughout the year at residences other than the principal residence exceeds ten per cent of the amount of the insurance granted under Item (a) Paragraph 3, such excess value is not insured hereunder unless specifically endorsed hereon.

8. Unless otherwise endorsed hereon, no other insurance against the risks hereby insured is permitted on the property covered hereunder except as to property described under Paragraphs 4(a) and (b), 5(b) and (c), 6(a) and (b). If at the time of loss or damage, there is any other valid and collectible insurance which would attach on the property described in Paragraphs 4(a) and (b), 5(b) and (c), 6 (a) and (b) had this policy not been effected, then this insurance shall apply only as excess insurance over all such other insurance and in no event as contributing insurance.

Attached to and made part of Policy No.............of the................ Insurance Company.

Jewelry-Fur Floater Policy (World Wide)

[Space for name
of insurance company]

Amount $............. *Rate* .... *Premium* $.

In consideration of the stipulations herein named and of.
Dollars, Premium,
Does Insure...hereinafter called the Assured, from the day of...............................19...., at noon, to the............................day of........................19....,
at noon, Standard time at place of issuance, for the sum of..................
....Dollars,

On jewelry, furs and garments trimmed with fur or consisting principally of fur, as per schedule attached or as scheduled below, being property of the Assured and members of his or her family of the same domicile, against all risks of loss or damage, except as hereinafter excluded, whilst in all situations.

This policy does not insure against loss or damage occasioned by:

Gradual Deterioration, Moth, Vermin or Inherent Vice; War, Invasion, Hostilities, Rebellion, Insurrection, Confiscation by order of any Government, Public Authority or risks of Contraband or Illegal Transportation and/or Trade.

Where any insured item consists of articles in a pair or set, this policy is not to pay more than the value of any particular part or parts which may be lost, without reference to any Special value which such article may have as part of such pair or set; nor more than a proportionate part of the insured value of the pair or set.

This insurance shall in no wise inure directly or indirectly to the benefit of any carrier or other bailee.

The Assured shall as soon as practicable report to this Company or its agent every loss or damage which may become a claim under this policy and shall also file with the Company or its agent within ninety (90) days from date of loss a detailed sworn proof of loss. Failure by the Assured to report the said loss or damage and to file such sworn proof of loss as hereinbefore provided shall invalidate any claim under this policy for such loss.

All adjusted claims shall be paid or made good to the Assured within thirty days after presentation and acceptance of satisfactory proofs of interest and loss at the office of the Company.

No suit, action or proceeding for the recovery of any claim under this policy shall be sustainable in any court of law or equity unless the same be commenced within twelve (12) months next after discovery by the Assured of the occurrence which gives rise to the claim. Provided, however, that if by the laws of the State within which this policy is issued such limitation is invalid, then any such claims shall be void unless such action, suit or proceeding be commenced within the shortest limit of time permitted by the laws of such State to be fixed herein.

The policy may be canceled by the Assured by mailing to the Company written notice stating when thereafter such cancelation shall be effective. This policy may be canceled by the Company by mailing to the Assured at the address shown in this policy or last known address written notice stating when not less than .... days thereafter such cancelation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date of cancelation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Assured or by the Company shall be equivalent to mailing.

If the Assured cancels, earned premiums shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premiums shall be computed pro rata. Premium adjustment may be made at the time cancelation is effected and, if not then made, shall be made as soon as practicable after cancelation becomes effective. The Company's check or the check of its representative mailed or delivered as aforesaid shall be a sufficient tender of any refund of premium due to the Assured.

This policy shall be void if the Assured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof or in case of any fraud, attempted fraud or false swearing by the Assured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

The Assured shall submit, and so far as is within his or their power shall cause all other persons interested in the property and members of the household and employees to submit, to examinations under oath by any persons named by the Company, relative to any and all matters in connection with a claim and subscribe the same; and shall produce for examination all books of account, bills, invoices, and other vouchers or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Company or its representatives, and shall permit extracts and copies thereof to be made.

In Witness Whereof, this Company has executed and attested these presents, but this policy shall not be valid unless countersigned by a duly authorized Agent of the Company.

Transportation Policy (Annual Shipper's Form)

["All risks" type of coverage]

Amount $ *Rate* *Premium* $

In consideration of the stipulations named herein and of.
.Dollars Premium
this Company does insure..,
hereinafter called the Assured, whose address is............................

This policy covers shipments made between the.......................day of.................., 19....and the..................day of...., 19.... beginning and ending at noon (Standard Time) at place of issuance of this policy;

Covering on goods and merchandise, including packages, usual to the Assured's business, consisting principally of.. their own or held by them in trust, or on commission, or on consignment, or on which they have made advances, or sold but not delivered;

In the ordinary course of transit between...............................

This Company shall not be liable for more than..................Dollars in any one loss or disaster, either in case of partial or total loss, or salvage charges, or any other charges, or expenses, or all combined.

This policy covers only while the property insured is in the custody of:

(a) Any railroad, railway express company or common carrier by motor vehicle engaged in interstate or foreign commerce and connecting carriers;

(b) Other public truckmen and land transportation companies; it being warranted by the Assured that they will not enter into any special agreement, or accept or cause to be accepted any receipt or bill of lading under which any of their rights to recover the full value or the amount of damage to any property lost or damaged and insured hereunder against any such carrier or party liable therefor are released, impaired or lost.

Attaching from time the property leaves factory, store, or warehouse at initial point of shipment, and covering continuously thereafter, in ordinary course of transit, until delivered at factory, store, or warehouse at destination.

The Assured may release railway express companies from liability in excess of 50c per pound or $50.00 per shipment; also the Assured may accept the ordinary Bills-of-Lading from railroads and common carrier by motor vehicle engaged in interstate or foreign commerce.

This Policy Insures (Except as Hereinafter Provided):

Against all risks of physical loss or damage from any external cause, including theft, pilferage and non-delivery.

This Policy Does Not Insure:

(a) Accounts, bills, deeds, evidences of debt, letters of credit, passports, documents, railroad or other tickets, money, currency, bullion, notes, securities, precious stones, jewelry and/or other similar valuables, manuscripts and mechanical drawings.

(b) Loss by leakage, breakage, or by being spotted, discolored, moulded, rusted, frosted, rotted, soured, steamed, or from change of flavor, marring or scratching unless caused by fire, lightning, cyclone, tornado, flood, or by collision, derailment or overturning of vehicle, or by the vessel being on fire, stranded, sunk or in collision;

(c) Loss of market, damage or deterioration arising from delay, whether such delay be caused by a peril insured against or otherwise;

(d) Export shipments after ladened on board exporting steamer or under the protection of marine insurance, whichever first occurs, and import shipments until the risks assumed by the marine underwriter cease.

(e) Shipments by air or mail.

(f) Live animals except as follows: This Company shall be liable only for claims arising from death or injury rendering death immediately necessary in consequence of perils insured against;

(g) Loss or damage caused by strikers, locked-out workmen or persons taking part in labor disturbances or riots, or civil commotions;

(h) Loss or damage caused directly or indirectly by: (1) enemy attack by armed forces, including action taken by military, naval, or air forces in resisting an actual or an immediately impending enemy attack; or (2) invasion, insurrection, rebellion, revolution, civil war, usurped power; or (3) seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority or risks of contraband or illegal transportation or trade.

Record of shipments: The Assured warrants that they will keep an accurate record of all shipments insured hereunder, which record shall be open for inspection of duly authorized representatives of this Company at all reasonable times.

Report of shipments and premium readjustment: The premium charged under this Policy is based on estimated shipments of $.................. made during the period insured, and the Assured warrants that at the end of........... ....they will report to this Company the total value of all shipments covered hereunder during the period for which such report is required, and upon the total of all reported shipments exceeding in the aggregate the said estimate, the Assured agrees to pay this Company additional premium at the rate of.....................per $100 of value in excess of said estimate, such additional premium to become due and payable to this Company immediately upon the furnishing of the aforesaid report or reports; but in the event of the actual shipments falling short of the said estimate, then this Company will return premium at the same rate on the deficiency, but no return premium shall become due or payable until the expiration of this Policy.

[*Note:* In addition to the provisions quoted above, transportation policies also include terms and conditions similar or identical to those appearing in the scheduled property floater policy, which is shown elsewhere in this appendix.]

Bailees' Customers Form

[Typical form for laundries or dry cleaning plants. Usually attached to a basic inland marine policy similar in its provisions to the scheduled property floater policy.]

1. (*a*) *Property covered.* On all kinds of lawful goods or articles accepted by the Assured for cleaning, renovating, pressing, dyeing, repairing, or laundering (the property of others), while contained on the premises occupied by the As-

sured, or in the custody of his agents or branch stores and while being transported to and from the premises of his customers or branch stores or agencies.

(*b*) *Named locations.* The specific locations hereinafter named in the Schedule of Locations and Limits of Liability are all the locations owned, rented or controlled, wholly or in part, by the Assured and used by the Assured in the conduct of his business at the inception of this policy or to be used by the Assured as such during the term of this policy. No liability shall attach hereunder at any location owned, rented or controlled, wholly or in part by the Assured and used by the Assured in the conduct of his business, except for a period of seventy-two hours after commencement of such use, unless such location has been reported to the Company and endorsed hereon.

(*c*) *Schedule of locations and limits of liability.* The following is the schedule of named locations referred to in the preceding paragraph and the limits of the Company's liability for loss or damage from any one casualty at each, also the limits of the Company's liability for loss or damage from any one casualty elsewhere.

Limit of liability	*Named Locations*
$......................	at
$......................	at
$......................	at
	Elsewhere
$......................	for a period of seventy-two hours only at any unnamed location owned, rented or controlled wholly or in part by the Assured and used by the Assured in the conduct of his business, such period to begin with the commencement of the use of such location by the Assured.
$......................	at any other location which is not owned, rented or controlled wholly or in part by the Assured and used by the Assured in the conduct of his business.
$......................	on any one vehicle or messenger, while in transit at the risk of the Assured.

This Policy Insures Against Direct Loss or Damage Caused by:

2. (a) Fire and lightning;
   (b) Explosion, excluding explosion originating within steam boilers, pipes, fly wheels, engines and machinery connected therewith and operated thereby;
   (c) Collision and/or overturning of transporting conveyance;
   (d) Theft, burglary and holdup;
   (e) Cyclone, tornado or windstorm;
   (f) Sprinkler leakage;
   (g) Flood while in transit, meaning thereby rising navigable waters;
   (h) Earthquake;
   (i) Any of the above listed perils, while in the custody of common carriers or mail service (shipments to transients at hotels or temporary residences are covered if shipped by government insured parcel post or registered mail);
   (j) Confusion of goods, resulting from any of the above listed perils.

This Policy Does Not Insure Against:

3. (a) Theft of goods or packages left on delivery vehicles overnight, unless locked in Assured's private garage or building occupied by Assured;
   (b) Theft or shortage of individual pieces or articles, unless caused by burglary or holdup;
   (c) Loss or damage to goods held on storage, or for which a storage charge is made, unless endorsed hereon;
   (d) Loss or damage to goods while in the custody of other dyers and cleaners or laundries, unless specifically endorsed hereon;
   (e) Loss resulting from misdelivery, or careless destruction of goods or other unaccountable loss where there is no evidence that the loss was occasioned by the perils specifically insured against herein;
   (f) Loss or damage resulting from infidelity of Assured's employees or persons to whom the insured property is entrusted.
   (g) Loss or damage resulting from theft, burglary or holdup by any person or persons in the Assured's service or employment, whether the theft, burglary or holdup occurred during the hours of such service or employment or not.

Adjustment and Payment of Premium:

4. The Assured agrees to keep an accurate record of the gross receipts (either collected or uncollected) from his business during the term of this policy, and to report to the Company or its authorized agent not later than the fifteenth day of each month the full amount of gross receipts (either collected or uncollected) during the preceding month or such time as is within the policy period and pay premium thereon monthly at the rate of $...............per $100 of such receipts.

5. In consideration of the issuance of this policy a minimum and deposit premium of $...............is due and payable the date hereof and annually thereafter. Monthly earned premium shall be credited against the deposit premium until such time as it shall have been fully earned by the Company, after which time payment of earned premium shall be as provided in paragraph 4 above.

6. Liability under this policy shall not in any case exceed that proportion of any loss hereunder, which the last reported gross receipts bear to the actual gross receipts for the period included in the said last report.

7. The Company, through its authorized representative and at all reasonable times, shall have access to the Assured's books and records for the purpose of determining the actual earned premium due, and any evasion or attempted evasion by the Assured in the matter of rendering such reports hereinbefore required, or payment of premium hereunder, shall be an absolute defense to any suit or action brought under this policy.

Special Conditions

8. Loss, if any, at the option of this Company, to be adjusted with and paid to the Assured, for account of whom it may concern, or adjusted with and paid direct to its customers.

9. Goods held by the Assured without instructions from the owners to hold on storage shall not be considered as being held on storage. Goods accepted for storage on which a cleaning charge has been made or is to be made are covered

only while in process or in transportation by the Assured between its plant or branch stores and its agencies or the premises of its customers.

10. This policy shall cover the customary charges that have been earned on lost or damaged goods.

11. The Assured agrees that all thefts for which claims are made under this policy will be reported promptly to the Police Department.

12. Any claim for loss or losses happening at the same time, as a result of one or more perils, amounting in the aggregate to $100.00 or less, may be adjusted by the Assured, in full conformity with the conditions of this policy, and statement of claim rendered to the Company.

13. No recovery shall be had under this policy, if at the time of loss or damage there be other insurance, valid or not, covering such loss or damage, except that this insurance shall apply only as excess and in no event as contributing insurance, and then only after liability of all other insurance has been exhausted. This clause shall not apply to insurance effected by a customer or a member of the family of a customer of the Assured, and the existence of such insurance, or payment of a loss thereunder, shall not constitute a defense to any claim otherwise payable under this policy, nor shall such insurance be called on to contribute to any loss payable hereunder.

14. Subject to all other terms and conditions of the policy to which this form is attached.

Attached to and forming part of Policy No........................of the

..................................Insurance Company

Issued to ....Date ....

Agency at ....

.....................................Agent.

Endorsement for Motor Common Carrier Policies of Insurance for Cargo Liability Under Section 215 of the Interstate Commerce Act

The policy to which this endorsement is attached is a cargo insurance policy, and is hereby amended to assure compliance by the insured, as a common carrier of property by motor vehicle, with section 215 of the Interstate Commerce Act, with reference to making compensation to shippers or consignees for all property belonging to shippers or consignees coming into the possession of such carrier in connection with its transportation service, and with the pertinent rules and regulations of the Interstate Commerce Commission.

In consideration of the premium stated in the policy to which this endorsement is attached, the Company hereby agrees to pay, within the limits of liability hereinafter provided, any shipper or consignee for all loss of or damage to all property belonging to such shipper or consignee, and coming into the possession of the insured in connection with its transportation service, for which loss or

damage the insured may be held legally liable, regardless of whether the motor vehicles, terminals, warehouses, and other facilities used in connection with the transportation of the property hereby insured are specifically described in the policy or not. The liability of the Company extends to such losses or damages whether occurring on the route or in the territory authorized to be served by the insured or elsewhere, except as follows:

....

(Name as exceptions only States in which the insured's operations are covered by other insurance)

Within the limits of liability hereinafter provided it is further understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, or any other endorsement thereon or violation thereof, or of this endorsement by the insured, shall affect in any way the right of any shipper or consignee, or relieve the Company from liability for the payment of any claim for which the insured may be held legally liable to compensate shippers or consignees, irrespective of the financial responsibility or lack thereof or insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which this endorsement is attached are to remain in full force and effect as binding between the insured and the Company. The insured agrees to reimburse the Company for any payment made by the Company on account of any loss or damage involving a breach of the terms of the policy and for any payment that the Company would not have been obligated to make under the provisions of the policy, except for the agreement contained in this endorsement.

The liability of the Company for the limits provided in this endorsement shall be a continuing one notwithstanding any recovery hereunder. The Company shall not be liable for an amount in excess of $2,000, in respect of any loss of or damage to or aggregate of losses or damages of or to the property hereby insured occurring at any one time and place, nor in any event for an amount in excess of $1,000, in respect of the loss of or damage to such property carried on any one motor vehicle, whether or not such losses or damages occur while such property is on a motor vehicle or otherwise.

Whenever requested by the Commission, the Company agrees to furnish to the Commission a duplicate original of said policy and all endorsements thereon.

This endorsement may not be canceled without cancelation of the policy to which it is attached. Such cancelation may be effected by the Company or the insured giving thirty (30) days' notice in writing to the Interstate Commerce Commission at its office in Washington, D. C., said thirty (30) days' notice to commence to run from the date notice is actually received at the office of said Commission.

Attached to and forming part of Policy No.................., issued by the ....(herein called Company) of ....to........................

.....................of...............................

Dated at..................this............day of............., 19....

Countersigned by...

Authorized Company Representative.

Jewelers' Block Policy

Whereas

of ,

hereinafter called the Assured, has made to this Company a written proposal and declaration dated the........................day of....................... which is attached hereto and made a part hereof, and which is hereby agreed to be the basis of this policy, and whereas, the assured hereby warrants the truth of each and every statement and particular contained therein.

In Consideration of such written proposal and declaration and of the stipulations and conditions and premium hereinafter provided, the.................. Company, hereinafter called the Company, *Does Insure* the Assured named herein for the term herein stated, and to an Amount not exceeding the Amount of insurance herein specified against loss of or damage to the property herein specified, and upon the stipulations and conditions hereinafter contained:

The term of this policy shall begin at noon on the........................ day of..................19...., and ends at noon on the................. day of..................19...., standard time of the place of issuance. The total amount insured hereunder is.............................Dollars ($.............) and the Premium therefor is............................. Dollars ($.............).

The property insured is as follows:

(a) Pearls, precious and semi-precious stones, jewels, jewelry, watches and watch movements, gold, silver, platinum, other precious metals, and alloys and other stock usual to the conduct of the assured's business, owned by the assured;

(b) Property as above described, delivered or entrusted to the assured, belonging to others who are not dealers in such property or not otherwise engaged in the jewelry trade;

(c) Property as above described, delivered or entrusted to the assured by others who are dealers in such property or otherwise engaged in the jewelry trade, but only to the extent of the assured's own actual interest therein, because of money actually advanced thereon, or legal liability for loss of or damage thereto.

The property above specified is covered while in or upon any place or premises whatsoever in the Continental United States of America, the Hawaiian Islands, Alaska and Canada, and also (subject to the limitations and exclusions hereinafter specified) while being carried or in transit within or between the above geographical limits.

This policy covers loss of and/or damage to the above described property or any part thereof arising from any cause whatsoever except as hereinafter mentioned, viz.:

(A) Loss or damage or expenses by or resulting from theft, conversion or other act or omission of a dishonest character (including sabotage) on the part of the assured or his or their employees or any person to whom the property hereby insured may be delivered or entrusted by whomsoever for any purpose whatsoever unless such loss arises when goods are deposited for safe custody by the assured, member of the firm or salesman while traveling, or while the goods are in the custody of (a) the post-office department as first class registered mail, or (b) a common carrier, or (c) a mere porter, helper or carrier not in the permanent employ of the assured.

(B) Damage sustained while the property is being actually worked upon and directly resulting therefrom.

(C) Warranted free from capture, seizure, arrest, restraint, detainment, confiscation, preemption, requisition or nationalization, and the consequences thereof or of any attempt thereat, whether in time of peace or war and whether lawful or otherwise; also warranted free from all consequences of hostilities or warlike operations (whether there be a declaration of war or not), piracy, civil war, revolution, rebellion or insurrection, or civil strife arising therefrom.

Warranted free of loss or damage caused by or resulting from strikes, lockouts, labor disturbances, riots, civil commotions or the acts of any person or persons taking part in any such occurrences or disorder.

(D) Loss or damage (including loss or damage by fire or theft) directly or indirectly contributed to, by or resulting from typhoon, hurricane, tornado, cyclone, volcanic eruption, earthquake, flood (meaning rising navigable waters), subterranean fire or other convulsion of nature:—This exception only applies to risks on land.

(E) Loss or damage occurring in course of transit by freight, by mail unless registered first class, by air mail unless first class registered and endorsed hereon, by air express (unless in sealed packages and endorsed hereon), or by express (unless in sealed packages by Railway Express), it being mutually understood and agreed that all such railway or air express shipments (valued at over $1,000.00) made by the Assured, members of the firm, or the agents, servants or employees of the Assured, shall be in wax or lead sealed packages with a declaration to the carrier of not less than 10% of the value of the contents of each package but not necessarily more than $1,000.00 on any single package.

(F) Breakage of articles of a brittle nature unless such breakage is caused by burglars or thieves and/or fire, and/or owing to an accident to the vehicle or other conveyance in which the property insured is being carried.

(G) Loss or damage to goods sold on the installment plan from the time they leave the Assured's custody.

(H) Loss or damage while the property is being worn by the Assured or by any officer, director, agent, employee, servant or messenger of the Assured, or by any dealer or other person, firm or corporation engaged in the jewelry trade or by any of their officers, directors, agents, employees, servants or messengers, or by any member of the family, relative or friend of any of the aforesaid, or while in their custody for such purpose.

(I) Loss of or damage to property insured hereunder whilst in or upon any automobile, motorcycle or any other vehicle unless, at the time the loss occurs, there is actually in or upon such vehicle, the Assured or a permanent employee of the Assured, or a person whose sole duty it is to attend the vehicle; this exclusion shall not apply to property in the custody of a common carrier covered hereunder, or in the custody of the Post Office department as first class registered mail.

(J) Loss or damage to the property hereby insured whilst at any public exhibition promoted or financially assisted by any public authority or by any trade association.

(K) No claim shall attach for any unexplained shortage. Neither shall any claim attach for any shortage in goods claimed to have been forwarded in a package when the package is received by the consignee in apparent good order with seals unbroken; or for the loss of or damage to goods when sent by any Express Line "C.O.D." with the privilege of inspection by the consignee before delivery to him.

(L) The Assured shall bear at his or their own risk twenty percent (20%) of each and every claim payable under this policy for loss of or damage to property insured hereunder from his or their display windows resulting from the smashing or cutting of such display windows.

(M) The Maximum Liability Of This Company For Any One Loss In Respect To:

1. (Outside limit) Property in transit by express or first class registered mail (air mail or air express, if endorsed hereon and not otherwise limited) or which is deposited in the vault of a bank or safe deposit company or which is in the possession of a customer or in the custody of a dealer in property described herein not employed by or associated with the Assured, is limited to $..........

2. (Travel limit) Property elsewhere than at the premises of the Assured (not included in clause one) is limited to $.........

This Agreement, However, Is Subject To The Following Stipulations And Conditions Which Shall Be Construed As Conditions Precedent To Any Recovery Hereunder.

1. The Company shall not be liable beyond the actual cash value of the property at the time of any loss or damage and the loss or damage shall be ascertained or estimated according to such actual cash value with proper deduction for depreciation, however caused, and shall in no event exceed the lowest figure put upon such property in the Assured's inventories, stock books, stock papers or lists existing at the time the loss occurred, nor the cost to repair or replace the same with material of like kind and quality. Any antiquarian or historical value attaching to the said property shall be excluded from the estimate of loss or damage.

2. Claims in respect of loss of or damage to pledged articles shall be limited to the amount actually loaned and unpaid plus the accrued interest at legal rate.

3. In case of loss of property of others (insured hereunder) held by the Assured, for loss of which claim is made upon the Company, the right to adjust such loss with the owner or owners of the property is reserved to the Company and the receipt of such owner or owners in satisfaction thereof shall be in full satisfaction of any claim of the Assured for the loss of said property for which such payment has been made. If legal proceedings be taken to enforce a claim against the Assured as respects any such loss, the Company reserves the right at its option without expense to the Assured, to conduct and control the defense on behalf of and in the name of the Assured. In no event is this Company liable for more than the total amount of insurance granted hereunder.

4. Warranted that the Assured keeps a detailed and itemized inventory of all property including traveling salesmen's stocks, in such manner that the exact amount of loss can be accurately determined therefrom by the Company.

5. This entire policy shall be void if the Assured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof or in case of any fraud or false-swearing by the Assured touching any matter relating to this insurance or the subject thereof whether before or after the loss.

6. It is understood and agreed that any insurance granted herein shall not cover (excepting as to the legal liability of the Assured), when there is any other insurance which would attach if this policy had not been issued, whether such insurance be in the name of the Assured or of any third party. It is however, understood and agreed, that if under the terms of such other insurance (in the absence of this policy) the liability would be for a less amount than would have been recoverable under this policy (in the absence of such other policy) then

this policy attaches on the difference. Warranted that this insurance shall not inure directly or indirectly to the benefit of any carrier or other bailee.

7. Warranted that the assured will maintain insofar as is within his or their control, during the life of this policy, watchman and the protective devices as described in his or their proposal form attached hereto.

8. In the event of loss or damage, or of anything likely to result in a claim under this policy, the Assured shall give immediate notice in writing to the Company, protect the property from further damage, furnish a complete list of the lost or damaged property stating the market value and cost of each article and the amount claimed thereon; and the Assured shall within sixty (60) days after a loss (unless such time is extended in writing by the Company), render to the Company a proof of loss signed and sworn to by the Assured, stating the knowledge and belief of the Assured as to the following: The time and cause of the loss or damage; the interest of the Assured and of all others in the property affected; the cash value of each item thereof, and the amount of loss of or damage thereto; all encumbrances thereon; all other contracts of insurance, whether valid or not, covering any of such property and shall furnish a copy of all the descriptions and schedules in all insurance policies if required.

9. The Assured as often as may be reasonably required shall submit, and so far as is within his or their power shall cause all other persons interested in the property and members of their households and employees to submit to examination under oath by any person named by the Company relative to any and all matters in connection with a claim, shall produce for examination all books of account, bills, invoices, and other vouchers or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Company or its representatives, and shall permit extracts and copies thereof to be made. No such examination under oath or examination of books or documents, nor any other act of the company or any of its employees or representatives in connection with the investigation of any loss or claim hereunder, shall be deemed a waiver of any defense which the company might otherwise have with respect to any such loss or claim, but all examinations and acts shall be deemed to have been made or done without prejudice to the company's liability.

10. There shall be no abandonment to the Company of any property, but the amount of loss or damage for which the Company may be liable, shall be payable sixty (60) days after satisfactory Proof of Loss, as herein provided, is received by the Company and ascertainment of the loss or damage is made by agreement between the Assured and the Company.

11. It is understood and agreed that if in case of loss the assured shall acquire any right of action against any individual, firm or corporation for loss of or damage to the property insured hereunder, the assured will, if requested by the Company, assign and transfer such claim to the Company under this Policy upon receiving payment for loss; and will subrogate the Company to all rights and demands of every kind, respecting the same, to the extent of the amount paid, and will permit suit to be brought in the assured's name but at the expense of said Company. In case of any loss or damage of any kind whatsoever, it shall be lawful and necessary, for the Assured or his or their factors, servants or assigns to sue, labor and travel for, in and about the defense, safeguard and recovery of the aforesaid subject matter of this insurance or any part hereof without prejudice to this insurance or waiver of the Assured's rights hereunder.

12. No suit or action on this policy for recovery of any claim shall be sustainable in any court of law or equity unless the Assured has fully complied with all the foregoing requirements nor unless commenced within twelve (12) months

next after the date of the occurrence which gives rise to the loss, provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event, no suit under this policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such State.

13. It is agreed that the sum hereby insured shall be reduced by the amount of any loss covered by this policy; and that the maximum limits of liability provided by clause (M) hereof, shall likewise be reduced by the amount of all losses subject to such maximum limits. Such reductions shall take effect as of the date of the occurrence from which the loss arises. The amount of loss, for the purpose of this clause, shall include any amount due to the Assured and any sums paid as rewards for the recovery of insured property, or otherwise. Unless otherwise provided by endorsement on this policy the Company and the Assured shall be deemed to have agreed that the full amount insured be reinstated automatically in the event of loss, and that a pro-rata additional premium is payable from the date of the occurrence which gives rise to the loss. Pending adjustment of any loss, payment of the premium for reinstatement of the amount thereof may be deferred until the amount of the loss has been fixed and the precise amount of the reinstatement premium is known.

14. No assignment of interest under this Policy nor change of business addresses as stated in the proposal attached hereto shall bind the Company unless the consent of the Company shall be endorsed hereon. No agreement, condition, or declaration of this policy shall be waived or changed, except by endorsement attached hereto, and countersigned by a duly authorized agent of the Company, nor shall this policy be valid unless so countersigned. No notice to, or knowledge possessed by any agent or any other person shall be held to effect a waiver or change in any part of this policy unless endorsed hereon and signed as above provided.

15. Cancellation.—This policy shall be cancelled at any time at the request of the assured, in which case the Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time by the Company by mailing to the assured at the address specified in this policy or at any later address known to the Company a five days' written notice of cancellation (such cancellation to be deemed accomplished upon the lapse of five days from date of mailing) with or without tender of the excess of paid premium above the pro-rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

APPENDIX D

Agreement of Guiding Principles
Inland — Inland

Whereas, from time to time disputes arise in the adjustment of losses under two or more Inland Marine policies because of overlapping coverage, which disputes require litigation or arbitration to determine the rights and equities of the underwriters of the respective policies, the occurrence of such disputes being against the interests of the insuring public and the companies,

Therefore be it resolved, that the Executive Committee recommend to the Members their concurrence in adopting the following General Agreement of Guiding Principles with respect to the following:

1. Inland Marine policies or certificates covering specifically an expressly described article or object for an express amount or scheduled individually itemized articles or objects with an express amount of insurance applying to each, shall in respect to such articles or objects be deemed to insure independently of any other Inland Marine policy that may cover the same property by whomsoever effected (except by Bailees or Carriers) to the same extent as if no other insurance existed, subject, nevertheless, to pro rata contribution from and with any other Inland Marine policy so specifically covering such property.

The foregoing shall not prejudice or affect the right of action against any Bailee or Carrier to which the scheduled property underwriter may be subrogated upon payment of any loss.

In applying any coinsurance clause, or average clause, or distribution clause, contained in any other Inland Marine policy, individually itemized articles or objects which are so insured shall not be considered.

2. Inland Marine policies issued to Bailees shall be deemed to be primary insurance in respect to any Inland Marine policy effected by the Bailor, unless the Bailee's policy is restricted to its legal liability or there be a written contract between the Bailor and Bailee expressly provided that the property shall be at the risk of the Bailor or that the Bailor shall carry insurance on the goods.

3. Policies issued to common or contract carriers covering their legal liability for cargo shall be deemed to insure independently of any policy issued to a shipper, consignee, owner or agent to the same extent as if no other insurance existed, subject, nevertheless, to pro rata contributions from and with other similar policies issued to the carrier.

As to 1 and 2 foregoing, it is agreed that they shall not override general condition 2 of the Furriers' Customers basic policy or the terms of the Jewelers' Block Policy.

As to 1, 2 and 3 foregoing, it is agreed that advances to policyholders under loan agreements shall not affect or prevent the application of this agreement.

It is agreed that differences of opinion in respect to the application or effect of this Agreement of Guiding Principles shall be submitted to the Loss Arbitra-

tion Committee of the Association unless other arbitrators be mutually agreed upon.

Addendum to Agreement of Guiding Principles Inland—Inland

4. Overlapping insurance shall be deemed to exist, in the case of termination, by expiration or cancelation, of a Motor Truck Cargo Liability policy with I.C.C. and State Endorsement(s) expiring subsequent thereto, and a succeeding Motor Truck Cargo Liability policy whose I.C.C. and State Endorsement(s) attach upon the termination dates of the endorsement(s) attached to the succeeded policy. In the case of such overlapping insurance between a succeeded insurer's unexpired I.C.C. and State Endorsement(s) and a succeeding insurer's I.C.C. and State Endorsement(s) whether issued or not: It is agreed that the succeeding insurer shall assume any liability under I.C.C. or State Endorsement(s) from the date of attachment of the succeeding policy but not in excess of the limits stated in the I.C.C. or State Endorsement(s).

5. Insurance under a Trip Transit Certificate or policy shall be deemed to be primary insurance in respect to the Personal Property Floater covering the same property.

6. When a claim is presented by the Assured under a Shippers' Transit Policy that covers shipments at the risk of the consignee it shall with respect to such shipments be deemed to insure independently of any other transit insurance by whomsoever effected to the same extent as if no other insurance existed, except when the Shippers' Transit policy stipulates in effect that it is a guarantee of collection of the loss from the consignee.

7. Overlapping insurance shall be deemed to exist, as between signatory members, whenever insured loss or damage may have occurred during continuous coverage under successive policies of two or more companies and the date of loss cannot be determined but may be presumed to have been during the existence of such policies, the loss shall be pro-rated between the companies on the basis of time each Company was at risk prior to discovery of loss, the total of such time in no case to exceed thirty-six months nor to extend in the case of missing property beyond the time the property was last seen nor in the case of damage beyond the time the property was last known to be in sound condition.

Agreement of Guiding Principles Fire — Inland Marine

Principle I

Insurance Covering Scheduled Property Shall Take Precedence Over Any Other Insurance

Insurance effected on an expressly described article or object for an express amount, or scheduled individually itemized articles or objects with an express amount of insurance applying to each, and not in the custody of a bailee, shall be deemed to insure independently of any other insurance by whomsoever effected to the same extent as if no other insurance existed.

Principle II

Two or More Insurances Covering Scheduled Property Shall Contribute

Two or more insurances covering an expressly described article or object for an express amount, or scheduled individually itemized articles or objects with an express amount of insurance applying to each, and not in the custody of a bailee, shall contribute in the proportion that the amount insured under each policy on such article or object involved in the loss bears to the sum of all scheduled insurances on such article or object, but in the event any co-insurance, average, or distribution clause(s) contained in one or more of the policies operate, contribution shall be as provided in General Condition No. 3 of this Agreement. (See note under Explanatory Review of Principle II.)

Principle III

Insurance Specific as to Location Shall Take Precedence Over Floating Insurance

Insurance, on property not in the custody of a bailee, specifically covering at the named address or location at which a loss occurs shall be deemed to insure independently of any *blanket* floating insurance by whomsoever effected to the same extent as if no other insurance existed.

Principle IV

Two or More Insurances Specific as to Location Shall Contribute, Except as Provided in Principle V

Except as specifically provided in Principle V, two or more insurances, on property not in the custody of a bailee, specifically covering at the named address or location at which a loss occurs shall contribute as provided in General Condition No. 3.

Principle V

'Personal Property Floaters' and Household Contents Insurance Shall Contribute

Insurance on property covered by the 'Personal Property Floater' and the Household Contents policy shall contribute to loss or damage.

A. At the residence or location named in the policies, in the proportion that the amount of each blanket insurance bears to the sum of all blanket insurance, except that as respects the 'Personal Property Floater,' the amount of insurance contributing shall be determined by deducting:

1. The total amount of any unexpired insurance covering at the location at which the loss occurs, as disclosed in the pick-up or credit endorsement(s) attached to and forming part of the 'Personal Property Floater' insurance, and
2. The total amount of any undisclosed insurance covering at the location at which the loss occurs,

but where stated limits of liability operate in any policy on certain articles of property, the value and loss on such property shall be deleted from the adjustment, and contribution shall be as provided in General Condition 3, on the property subject to such limit(s) of liability.

B. At all other locations, off-premises, or in all other situations covered by the policies, contribution shall be as provided in General Condition 3.

Principle VI

Two or More Blanket Floating Insurances Shall Contribute

Except as specifically provided in Principle V, two or more insurances covering on property not in the custody of a bailee:

(a) without an express amount of insurance applying to each expressly described or individually itemized article or object, and

(b) at an unnamed address or location,

shall contribute as provided in General Condition No. 3.

Principle VII

Insurance Effected by Bailee on Property Shall Take Precedence Over 'Off Premises' Household Contents Insurance

Insurance on property effected by a custodian covering on property owned by or belonging to others, under a Bailees' Customers or similar form of Inland Marine policy, shall be deemed to insure independently of any other insurance, to the same extent as if no other insurance effected by the owner under 'off premises' Household Contents insurance existed.

Nothing in this agreement shall affect the right of action accruing under subrogation against the bailee.

Principle VIII

Insurance Effected by Bailees on Property Shall Take Precedence Over Bailors' Insurance Except as Provided in Principle VII

Except as specifically provided in Principle VII, insurance on property effected by a custodian covering on property owned by or belonging to others, either directly as under a Bailees' Customers or similar form of Inland Marine policy, or indirectly as under a general contents or stock policy including property of others under 'trust and commission' or similar coverage, or *otherwise*, shall be deemed to insure independently of any other insurance, to the same extent as if no other insurance effected by or for account of the bailor or owner existed, unless there be a valid written agreement or contract between bailor and bailee expressly providing either

(a) that the property shall be at the risk of the bailor, or

(b) that the bailor shall effect insurance on the property, in which event the bailees' insurance shall not apply.

Insurance covering the bailees' own property and also directly or indirectly covering property owned by or belonging to others, may first be made available to pay any loss or damage occurring to the bailees' own property and bailed property not otherwise insured. Adjustment of loss on such property shall be subject to all terms, conditions and limitations of liability contained in the policy, except that value and loss of bailed property otherwise insured shall not be included.

Thereafter, the limit of liability under the policy shall be determined by including value and loss of all property at risk. If the limit of liability so determined exceeds the amount of the adjusted loss on the bailees' own property and bailed property not otherwise insured, the excess only shall be made available, as above provided for bailed property otherwise insured.

If the adjusted loss on the bailees' own property and the bailed property not otherwise insured exceeds the limit of liability above determined, the full amount

of such limit of liability shall be paid to such interests only, and the bailors' insurance shall pay the loss or damage to bailed property otherwise insured.

Right of action accruing under subrogation, by assignment, or otherwise acquired against the bailee, shall not be prejudiced or affected, except that if the exercise of such right shall be in conflict with the purpose of this Agreement, such right of action shall be waived.

Principle IX

Bailees' Customers Insurance Shall Take Precedence Over Other Insurance Effected by the Same Named Bailee-Assured

Insurance effected by a custodian covering on property owned by or belonging to others under a Bailees' Customers or similar form of insurance, shall be deemed to insure independently of any other insurance effected by the same named custodian under a general contents or stock policy including property of others under 'trust and commission' or similar coverage, to the same extent as if no such other insurance existed.

General Conditions

As to Principles I to IX inclusive, and any additional principles or amendments as may hereafter be adopted, it is AGREED

1. That as between Company Members only, the terms of any 'other insurance,' 'excess,' or 'contribution' clause(s) contained in the policies, certificates, or certifications of insurance, shall be set aside and be inoperative to the extent that they are in conflict with the purpose of this Agreement.

2. That any co-insurance, average, or distribution clause(s), or any other limitation of liability contained in any policy(ies) shall be fully operative, unless otherwise specifically provided.

3. That 'contribution,' unless otherwise specifically provided, shall be on the basis of the applicable limit of liability under each respective policy as though no other insurance existed, and the limit separately determined under each policy shall be:

(a) the amount of insurance, or
(b) the amount of loss, or
(c) the amount payable after applying any policy limitation,

whichever is the smallest amount. The limits so determined of all policies herein declared contributing shall be added and, if the total amount exceeds the whole loss, each policy shall pay its proportion of the loss as its limit bears to the sum of all the limits, but if the sum of the limits of liability is less than the whole loss, then each policy shall pay its limit of liability.

4. That insurance declared to be non-contributing shall not include, in applying any co-insurance, average, or distribution clause(s) contained in any policy(ies), the value or loss on property covered under the insurance declared to be primary, other than to the extent of any excess value and loss recoverable under the primary insurance.

5. That insurance covering property both scheduled and blanket, or both specific as to location and floating, shall be deemed to insure each item or portion separately, and that the loss shall be adjusted in accordance with the Principle applying to each item or portion declared to be separately insured.

6. That the Principle specifically providing the basis of settlement of disputes shall prevail over any Principle more general in scope.

7. That payments of loss, or advances under loan agreements, shall not affect or prevent the application of this Agreement.

8. That differences of opinion respecting the application or effect of this Agreement shall be submitted for arbitration to the Joint Arbitration Committee established by the National Board of Fire Underwriters and the Inland Marine Underwriters Association.

9. That acceptance of this Agreement shall not prejudice or affect any procedure in force for adjustment, apportionment, or arbitration of losses between:

(a) individual members of the National Board of Fire Underwriters, or

(b) individual members of the Inland Marine Underwriters Association,

and applicable to overlapping coverages within their respective fields.

Explanatory Review of the Agreement of Guiding Principles (Fire—Inland)

Principle I

Insurance on property scheduled under either Fire or Inland policies is primary. This Principle applies solely to scheduled articles with an amount of insurance along side each individual item such as:

1 Persian Lamb Coat $600
or
1 Diamond ring 1¼ kts., 10 baguettes $850
or
1 Leica Camera No. xxx B & L Lens No. xxx $285

Items insured blanket such as:

4 Wagons
8 Horses
Harness, blankets and miscellaneous equipment insured for $2,000 not exceeding $150 any one horse.
or
Silverware $5,000

do not come within this Principle as they are not 'scheduled individually itemized articles or objects with an express amount of insurance applying to each' article or object.

Principle II

Insurance on property scheduled under both the Fire and Inland policies contributes in proportion to the amount of insurance carried by each company.

Example:

Fire policy insures 1 Persian Lamb Coat	$ 400
Inland Fur Floater insures 1 Persian Lamb Coat	$ 600
Total Insurance	$1,000
Apportionment:	
Fire policy	400/1,000
Inland Fur Floater	600/1,000

Where one or the other policy contains a co-insurance clause or a provision that would reduce the amount recoverable by the owner, such as a deductible, the Limit of Liability rule will apply as provided in General Condition 3.

Example:

Fire policy insures per schedule
1 Persian Lamb Coat $400
(Subject to 80% co-insurance)
Inland Fur Floater insures
1 Persian Lamb Coat $600
(Subject to $50 deductible)
Sound value as agreed $600, loss $300.
Limits of Liability:
Fire policy 400/480 × $300 .... $250
Inland Fur Floater $300 less $50 deductible $250
Total Insurance Available $500
Apportionment:
Fire policy pays 250/500 × 300 = $150
Inland Fur Floater pays
250/500 × 300 .... = $150
Loss $300

Principle III

Property insured at the named location at which the loss occurs is primary over floater insurance.

Example:

Owner carries
A—Fire insurance at contractor's premises $5,000
B—Inland Garment Floater naming contractor's premises among others, but insuring blanket as to amount at each location $50,000
Apportionment:
Fire insurance is primary and Inland Garment Floater pays the excess, if any.

(If bailee insurance is available Principle VIII would operate as between the bailee insurer and the primary location insurer.)

Principle IV

Where both fire and inland policies cover at the same named location at which the loss occurs, they contribute.

Example:

Owner carries
A—Specific Fire insurance at Contractor's Premises $5,000
(Subject to 100% co-insurance)
B—Inland Garment Floater for $10,000 naming Contractor's premises for an amount of $5,000
(Subject to 100% co-insurance at all locations)
Sound value at Contractor's premises $12,500—Loss $5,000
Sound value at all locations—$15,000
Limits of Liability:
Fire policy
5,000/12,500 × 5,000 .... = $2,000.00
Inland Garment Floater
10,000/15,000 × 5,000 .... = $3,333.33

Total Insurance available $5,333.33
Apportionment:
Fire policy pays .... 2,000/5,333 × 5,000
Inland Garment Floater pays .... 3,333/5,333 × 5,000

Principle V

The 'Personal Property Floater' in quotations in the title is intended to indicate that specific form of Inland floater and not personalty in general. Two bases of contribution are provided in order to equitably adjust claims between the Fire and Inland subscribers:

A. Loss at the location named in both insurances requires consideration of the fact that the Inland form of 'Personal Property Floater' contemplates insurance to value. The unexpired Fire insurance for which credit has been allowed reduces the 'Personal Property Floater' insurance.

Example:

Personal Property Floater insurance	$10,000
Unexpired Fire insurance	5,000
Otherwise uninsured than under Personal Property Floater	5,000
Apportionment:	
Personal Property Floater pays	5,000/10,000
Fire pays	5,000/10,000

Where the loss applies to general household contents as above, but may include loss on unscheduled jewelry on which the Personal Property Floater would cover for but $250, whereas no limit appears under the Household Contents insurance, General Condition 3 operates.

Example:

Loss on general contents	$2,000
Loss on jewelry	$ 500
Sound values—general contents	$9,000
Jewelry	$1,000
	$10,000
Insurance carried:	
Personal Property Floater	$10,000
(All jewelry insured but subject to $250 loss limit)	
Fire insurance	$5,000
(No limit on jewelry)	
Apportionment:	

INSURANCE CARRIED	PAYS ON CONTENTS (PRO RATA)
PPF $10,000	5,000/10,000 × 2,000
Fire 5,000	5,000/10,000 × 2,000

PAYS ON JEWELRY
(LIMIT OF LIABILITY)
$250—250/750 × 500
500—500/750 × 500

$750

(Principle V nullifies the policy provision that P.P.F. policies are excess as to H.H.F. insurance. Therefore, when loss occurs at named location, whenever the P.P.F. policy exceeds the total amount of: Par. a (1) any unexpired insurance covering at named location as disclosed in pick-up endorsement; plus (2) any undisclosed insurance covering at the named location—then the P.P.F. policy will contribute on the basis of the difference.)

B. At all unnamed locations the Limit of Liability rule would apply.

Example:

Loss at secondary residence	$700	
Insurance carried:		
Personal Property Floater	$10,000	
(with limit of 10%)		$1,000
Fire Insurance	$5,000	
(with limit of 10% 'off-premises')		$500
Coverage available to assureds		$1,500

Example:

Limits of Liability:		
Personal Property Floater	$700	
Fire insurance	500	
Total Insurance Available	$1,200	
Apportionment:		
Personal Property Floater pays		700/1,200 × 700 = $408.33
Fire Insurance pays		500/1,200 × 700 = $291.67

Principle VI

Where both Fire and Inland policies cover the loss in the absence of each other, they contribute. The exceptions:

1. in the custody of a bailee,
2. scheduled, or
3. at the specific location at which the loss occurs,

apply as each such conflict is otherwise specifically provided for.

(Note: Principle VI will probably be encountered only where a P.P.F. and the 10% off-premises provision of the H.H.F. form are both involved. In such cases, the limit of liability rule applies.)

Principle VII

This Principle refers only to property insurance and not legal liability insurance. Insurance effected by a bailee on customers goods shall be primary. This principle specifically covers conflicts involving 'off-premises' coverage under fire Household Contents policies and insurance effected by bailees.

Claims filed by fire underwriters with the bailee underwriters after payment or advance to owners shall be recognized to the same extent as if directly presented by the owner through the bailee in order to fulfill the purpose of this Agreement.

Principle VIII

All other bailee-bailor conflicts between fire and inland insurance except as provided in Principle VII come under this Principle.

Where the loss on the bailor's, or customer's goods is covered under the insurance effected by the bailee, such bailee's insurance is primary.

The exception is where the bailor and bailee have expressly agreed in writing prior to the loss that:

1. the risk is on the owner, or
2. the owner will effect the insurance.

Where the bailee's insurance covers his own property, as well as property of others, the bailee's insurance shall first be made available to the loss on the bailee's own property and to property not otherwise insured. Such claim or

claims will be adjusted subject to all policy conditions effecting the adjustment, except that value and loss of otherwise insured property shall be deleted from the adjustment.

A second statement of loss should then be prepared by the adjuster including all values and loss covered by the terms of the bailee's insurance as written to determine the maximum liability under the policy.

Distribution should then be made:

1. to the loss on the bailee's own property and to the loss on otherwise uninsured interests,
2. to the otherwise insured interests for the difference, if any, up to the maximum liability under the bailee's insurance.

While right of action under subrogation is retained by the bailor's insurers, the inclusion of the bailee underwriter's name in any action against the bailee is contrary to the spirit of this Agreement.

Principle IX

Insurance effected by a bailee under a Bailee's Customers form shall be primary over any other insurance carried by the same named bailee even though the general contents insurance may also cover the property of others in his custody.

Insurance covering a bailee's legal liability imposed by law as distinguished from assumed liability is not within the scope of this principle.

General Conditions

1. Upon the occurrence of a loss with overlapping insurance, it is essential that all provisions relating to 'other' or 'excess' insurance be set aside in order to apply the Principle governing the situation.

2. The insurance declared to be primary under the governing Principle must receive the benefit of all conditions written into that contract by the underwriter.

It is intended that co-insurance, reference to which appears in the General Conditions of the Agreement, shall be applied as if it were a Reduced Rate Contribution or a Reduced Rate Average Clause.

3. The 'Limit of Liability' rule is the most equitable basis of apportionment and has been modified in those Principles where underwriting practice required some specific handling.

4. The insurance declared to be excess under the governing Principle, having been relieved of liability by reason of specific insurance, must waive inclusion of both value and loss in the adjustment of loss on any other property involved in the loss to the full extent of the primary insurance.

5. In order to apply the Principle or Principles governing each item or portion of applicable insurance it is necessary to provide that each item or portion be considered as though separately insured, in the absence of such provision in the policy as written.

6. This provision is to avoid the possibility of any conflict being construed under the more general Principle VI when a more specific principle controls.

7. The rights of subscribers can not be prejudiced by placing an assured in funds. Recoveries can proceed thereafter under the terms of this Agreement, either directly or by arbitration.

8. Should any uncertainty arise as to the application of these Principles, the services of the joint Arbitration Committee of the National Board of Fire Underwriters and the Inland Marine Underwriters Association will be available to all subscribers to this Agreement whether members of these organizations or not.

9. Upon the occurrence of overlapping insurance between 'fire' and inland marine policies, the conflict will be settled under this Agreement. Thereafter if two or more fire policies present a problem of apportionment under the National Board rules, adjustment will proceed in accordance with such rules among such fire interests on the amount of their liability under this Agreement. Likewise, if two or more inland marine policies are in conflict, adjustment will thereafter proceed between the inland interests in accordance with the Inland Marine Agreements of Guiding Principles.

Agreement of Guiding Principles Casualty — Inland Marine

Whereas, from time to time disputes arise in the adjustment and apportionment of losses under two or more policies because of overlapping coverage, which disputes require litigation or arbitration to determine the rights and equities of the underwriters of the respective policies, and

Whereas, the occurrence of such disputes is against the interests of the insuring public and the companies,

Therefore be it resolved, that the National Bureau of Casualty and Surety Underwriters and the Executive Committee of the Inland Marine Underwriters Association recommend to their respective Members and Subscribers their concurrence in adopting the following Principles with respect to insurance under such Inland Marine policies, certificates or certifications hereinafter dealt with, overlapping with insurance under such policies, certificates or certifications hereinafter dealt with, issued by Casualty companies.

Principle I

Residence and Outside Theft Insurance vs. Personal Effects Floaters not Endorsed to Exclude Burglary, Theft, Larceny and Mysterious Disappearance

A. Insurance covering expressly described or itemized property shall take precedence over blanket insurance.

Insurance effected on an expressly described article or object for an express amount, or scheduled individually itemized articles or objects with an express amount of insurance applying to each, shall be deemed to insure independently of any other insurance by whomsoever effected on the same property to the same extent as if no other insurance existed.

Any co-insurance, average, or distribution clause(s), as well as any stated limits on certain articles, property, or at locations at which the loss occurs, shall be fully operative, except that the Member or Subscriber carrying the non-scheduled insurance shall not include, in applying such clauses, the value of the expressly described or scheduled article(s) or object(s) other than to the extent of any excess value over and above the net amount recoverable under the scheduled insurance.

B. Insurance specific as to location shall take precedence over floating insurance.

Except as provided in 'A' above, insurance (including any blanket portion of

insurance which also covers expressly described or scheduled article(s) or object(s)) specifically covering at the named address or location at which a loss occurs shall be deemed to insure independently of any blanket floating insurance that may cover the same property to the same extent as if no other insurance existed.

Any co-insurance, average, or distribution clause(s) as well as any stated limits on certain articles, property, or at locations at which the loss occurs, shall be fully operative, except that the Member or Subscriber carrying the non-specific insurance shall not include, in applying such clauses, the value of the property specifically insured as herein defined, other than to the extent of any excess value over and above the net amount recoverable under the specific insurance.

C. Except as provided in 'A' and 'B' above, insurance on property, covered under the inland forms of Personal Effects Floater and Tourists' and Travellers' Baggage policies and also covered under the casualty forms of Residence and Outside Theft policies, shall contribute as hereinafter provided to the payment of any loss, including recovery expense (such as advertising, sue and labor expense, salvage charges, payment of rewards and the like) when such loss is recoverable under both inland and casualty insurances except for the operation of any 'Other Insurance' or 'Excess' clauses or provisions.

Principle II

Apportionment of Loss Subject to Contribution

Contribution as provided in this Agreement of Guiding Principles shall be on the basis of the applicable limit of liability under each respective policy, as though no other insurance existed, and the limit separately determined under each policy shall be (a) the amount of insurance, or (b) the amount of loss and expense, if any, or (c) the amount payable after applying any policy limitation, whichever is the smallest amount. The limits so determined of all policies herein declared contributing shall be added and if the total amount exceeds the whole loss, each policy shall pay its proportion of the loss as its limit bears to the sum of all the limits, but if the sum of the limits of liability is less than the whole loss, then payment by each policy shall be the basis of the maximum limit.

As to Principles I and II Inclusive, it is agreed:

1. That payments or advances under loan agreements shall not affect or prevent the application of this agreement.
2. That differences of opinion respecting the application or effect of this Agreement of Guiding Principles shall be submitted for arbitration to the Joint Arbitration Committee established by the National Bureau of Casualty Underwriters and the Inland Marine Underwriters Association.
3. That acceptance of this Agreement of Guiding Principles shall not prejudice or affect any procedure in force for adjustment, apportionment, or arbitration of losses between:
   (a) Individual members of the National Bureau of Casualty Underwriters, or
   (b) Individual members of the Inland Marine Underwriters Association, applicable to overlapping coverage within their respective fields.

The Purpose, Scope and Application of the Agreement of Guiding Principles (National Bureau and IMUA)

The preamble is a statement of its purpose. The Agreement provides for the

equitable distribution of available insurance over losses. It will not re-write policies, nor make liability where none exists, nor increase the extent of liability to the policyholder under policies as written. It merely disregards any 'other insurance' provisions as between signatories and applies the policies to the loss on an equitable and reciprocal basis depending on the nature of the risk assumed by the underwriter.

Principle I

Title—Only problems involving the 'Residence and Outside Theft' policy and the inland forms of 'Personal Effects Floater' and Tourist Floaters come under this Principle.

The phrase 'not endorse to exclude burglary, theft, larceny and mysterious disappearance' refers to the inland form of 'Personal Effects Floater' on which a reduction in rate has been granted to exclude such coverages.

Section A—Insurance on property scheduled under either of the policies is primary. This section applies solely to scheduled articles with an amount of insurance set opposite each individual item such as:

1 Persian Lamb Coat $600
or
1 Diamond Ring 1¼ kts., 10 baguettes $850
or
1 Leica Camera No. xxx with B & L Lens No. xxx $285

Items insured blanket such as:

Jewelry, Sterling Silver and Furs $500

do not come within this section as they are not 'scheduled individually itemized articles or objects with an express amount of insurance applying to each' article or object.

As respects any co-insurance, average or distribution clauses, the second paragraph of this section retains for both interested underwriters all such policy conditions and limitation, but in view of the fact that the scheduled insurance is declared primary until exhausted, the blanket or floating insurance can only equitably include the excess value over the primary scheduled insurance.

Example:

Owner sustains loss of fur coat from premises
Insurance carried:
(a) Residence and Outside Theft Scheduling 1 Persian Lamb Coat........$600
(b) Personal Effects Floater endorsed to cover domicile—10% limit on furs $1000
Agreed Value on Persian Lamb Coat $800
Apportionment:
Residence and Outside Theft pays $600
Personal Effects Floater pays $100
Application of Limitation:
Sound Value of coat $800
Specific insurance $600
Excess value $200
Limit on furs in Personal Effects Floater $100

Section B—If the location at which the loss occurs is specifically named in the policy as the insured premises, insurance under such policy is primary over any floater as to loss at such location, except as to property of guests whose insurance shall be primary.

Example:

The assured domiciled at Westport, Ct., carries:

(a) Residence and Outside Theft insurance at No. 100 Blank St., N. Y. C., for $2,500

(b) A Personal Effects Floater $1,000

Apportionment:

As the Residence and Outside Theft insurance is specific as to location, it is primary insurance over the floater on any loss at No. 100 Blank St.

Section C—All other cases of conflict where an assured carries Residence and Outside Theft insurance and 'Personal Effects Floater' or Tourist Floater insurance, and not specifically provided for under Section A & B, are agreed to be contributing.

The inclusion of 'recovery expense' merely clarifies the intent that contribution should equitably include such expenses as well as the loss itself.

The provision "when such loss is recoverable under both inland and casualty insurances except for the operation of 'other insurance' or 'excess' clauses or provisions" is included for clarification. Where either insurance would pay the loss in the absence of the other policy, contribution is provided.

Example 1. Where both forms schedule the same articles both would contribute.

Example 2. Where both insurances specifically cover at the same named location, both would contribute, such as where an assured carries:

(a) Residence and Outside Theft insurance at No. 100 Blank St.

(b) Personal Effects Floater endorsed to cover at No. 100 Blank St.

Example 3. A loss occurring at a secondary residence not named in either policy would be settled by contribution.

Principle II

Contribution as provided under Section C of Principle I is provided for under the Limit of Liability rule of apportionment. The amount recoverable by the assured under each policy is determined without regard to the fact that other collectible insurance exists. After determining the maximum amount collectible on any given loss under each insurance, the two limits of loss liability are added and each pays its pro rata share of the loss that the amount recoverable under its insurance bears to the total recoverable under both policies.

Example:

Amount of loss $500 on jewelry

Insurance carried:

(a) Residence and Outside Theft $1000 with a $500 limitation on jewelry.

(b) Personal Effects Floater for $1000 with a limit of 10% on jewelry.

Apportionment:

Recoverable under Residence and Outside Theft insurance $500

Recoverable under Personal Effects insurance $100

Residence and Outside Theft pays .... 500/600 × 500

Personal Effects pays .... 100/600 × 500

General Conditions

1. Payment or advance by either subscriber to the Agreement will not act to that subscriber's prejudice. The customary procedure is for the company receiving the claim from the assured through broker or agent to pay it with notice to the other insurer that they are so doing, and thereafter merely send a bill for

the proportion due from the other subscriber with an offer to submit the proof of loss or other data on which full payment was made.

2. Where there is a difference of opinion on any specific case, such matter shall be submitted to the Joint Arbitration Committee for settlement within the intent of the Agreement.

3. This provision is included to enable subscribers to settle any matters within their own group after the conflict between casualty insurers and inland marine insurers have been disposed of. A specific example may help to clarify this particular provision.

Example:

Loss of $100 on the premises of a dry-cleaner who carries Bailees' Customers Insurance.

Owner carries:

(a) Residence and Outside Theft policy	$2,500
(b) Personal Effects Floater	$1,000

Apportionment:

Residence and Outside Theft Insurance pays	$50
Personal Effects insurance pays	$50

Thereafter the Personal Effects underwriter, having paid $50, is entitled under an Agreement of Guiding Principles between inland marine underwriters to present claim to the cleaner's insurer and collect its loss in full. The Residence and Outside Theft underwriter, not being a party to that intergroup agreement, has merely subrogation rights against the cleaner.

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